

Notes Collected
1863

Notes on Law
taken from the lectures of
The Hon^{ble} Lapping Webb

and
James Gardin Esquire
Vol. 2nd
Containing the
following titles;

1. Bailment.
2. Luns & Lunskeepers,
3. Covenant-breakers,
4. Kest. & Kestine
5. Account,
6. Notice and Request,
7. Giffenp & it,
8. References to Actions
9. Private Wrongs & their remedies,
10. Evidence

1870

Distinction between a bailor and a bailee

A bailment is a contract to deliver a thing to be used up, or as a warehouse, or for other purposes, that they shall be restored to the bailor in his own place where the goods are delivered. It is a contract to deliver a thing to be used up, or as a warehouse, or for other purposes, that they shall be restored to the bailor in his own place where the goods are delivered.

Every bailment is a contract, I think, to deliver a thing to be used up, or as a warehouse, or for other purposes, that they shall be restored to the bailor in his own place where the goods are delivered. It is a contract to deliver a thing to be used up, or as a warehouse, or for other purposes, that they shall be restored to the bailor in his own place where the goods are delivered.

It appears to me that the bailor has, in all cases, an interest in the thing which he has the right of possession. It is a contract to deliver a thing to be used up, or as a warehouse, or for other purposes, that they shall be restored to the bailor in his own place where the goods are delivered.

Now, the bailor is obligated to restore the property to the bailor. It follows that he must keep it according to the terms of the contract. If he does not, he is liable for it. If he does not, he is liable for it. If he does not, he is liable for it.

Now to ascertain the principles of law, we see this title.

The most general rule on this subject is, that the bailor is not liable, as are the bailee, with a...

more or less proportioned to the nature of the bailment. In some cases more care is evidently required, than in others. In some cases, ordinary diligence is required. In some, more than ordi-
 nary and in others, less. In others still, the bailor is liable, however great his diligence may have been.

The ordinary diligence is measured such a degree of diligence as rational men ordinarily use in the management of their own affairs. This definition must necessarily be vague. The degrees of diligence, on each side of ordinary, have no definite names. There are called more or less than ordinary.

In every degree of care, there is some passing degree of neglect. Recklessness of ordinary care, is called gross or neglect. Negligence of less than ordinary care is called more than ordinary neglect. A negligence of more than ordinary care is less than ordinary neglect.

Gross neglect is generally an evidence of fraud. But if the bailor kept the property bailed, in the same way, as he did his own of the same kind it is not evidence of fraud.

In the substitution of the General rule, such more particulars are necessary.

5 Where the bailment is intended for the benefit of the bailor, and the bailor is unreasonable only for gross neglect. Good faith is one that is required in him. In cases of care here evidence is provided on the evidence.

2d. 1st. 1st.
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consideration that the bailer is to receive no benefit

3.

2nd When the bailer alone is benefitted, he is liable for slight neglect

St.

Jan. 27-
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3rd When the bailment is advantageous to both, as in the ordinary case is required. As both are benefitted both should incur the risk.

These three rules hold only, when there is no special agreement respecting the risk. For either may by contract, assume the whole.

Bailments are usually divided, by commentators into six kinds. Some divide them into five but I have known them staged in more than three broad sorts. I conceive it to be immaterial which of these divisions is used. But as the rules in the book are generally applied to bailments as staged by the Com. Law writers, I have preferred to treat of them under six divisions.

1. Depositum. This is a delivery of goods by the bailor to the bailee to be kept for him without reward. The bailee is here called a depository. & the bailment, a warehouse bailment.

2. Commodatum. This is a gratuitous loan of goods to be used by the bailee, who is here called the borrower, & the bailor, the lender. This kind of bailment must be distinguished from what is called usufructum, which though a loan & generally a gratuitous one, is not a bailment. For there the whole loaned is not to be restored but one

of the same degree. In a metonymy, the subject
 proper to it, being used to the borrower, & he must ab-
 scond with the cap that supports it.

Nov. 24. 1791.
 Dec. 1792.
 Dec. 24. 1791.
 Dec. 24. 1791.
 Dec. 24. 1791.

3rd Locatio et Conductio. This is a delivery of
 property to the hirer to be used by him for hire, to be
 paid to the bailor. The bailor is called the locator,
 or locator, & the hirer the honor.

4th Locatio et Conductio. This bailment is a
 delivery of goods as mercantile for a rent, some from the
 hirer to the bailor. The bailor is here called the
locator & the hirer the honor.

5th The 5th kind of Bailment is a delivery
 of property to be carried, or that can in other way be used
 with or to it, by the hirer, for a reward to be paid
 by the hirer. This includes deliveries to common
 carriers to private carriers and to private persons.

6th The 6th kind of Bailment is
 like the 5th except that in this the reward to be paid
 by the bailor is, or is intended, as reward to be
 paid to the bailor.

These several kinds of Bailment will now be con-
 sidered in their order.

1. Deposition. I have already observed that the prin-
 cipal object in this kind of bailment, the delivery of goods
 to be carried, or used, is that when the goods are used
 by the hirer, the reward to be paid to the bailor is
 now in the case of Deposition the reward to be paid to the

It is assumed in the Director. The burden is on the Director.
burden, therefore to exercise pragmatic faith. In the Director.
into from a Holborn. It is said that ordinance case.
enure the burden. That it is apparent that the burden is
ordinance is not then ordinance in it usual ordinance
ordinance. It is rather beyond doubt that the
burden is in this case, ordinance for pragmatic
burden, he is not in all cases, ordinance even where he
has been ordinance a pragmatic. For in ordinance, it is
not the ordinance for which he is liable. But for the
ordinance, at which ordinance is ordinance ordinance a pragmatic
pragmatic evidence. If this pragmatic evidence, then
can be ordinance as in the burden, having that he ordinance
his ordinance in the ordinance, he will not be ordinance
will ordinance for pragmatic.

These letters however, do not take true where the 9th of Jan 911-12.
 had been had by express agreement a business all the time 66.
 with upon himself. For it is a maxim that express
deum facit express testamentum.

The other objections are opposed to the rule that the
bailee is answerable for gross neglect. Just in Bank
note case there is an oblique intimation that the bailee ^{4 to 50}
he must keep the property at his peril. Many of our ^{to 50} ~~Shaw~~
the opinion given by the major majorities in that
case are not law. But the decision was unimpor-
tantly incorrect. For the majorities state in a voice
in to keep oath, and so the bailee would be lia-
ble for gross neglect.

There seems formerly to have been a distinction made between the cases of a special agreement by the depository, to keep safely, with a valuable consideration.

2^d May 919

D.L.P. 109

12 May 487

3 June 462

25-6 394

1 Dec 241

tion & such an agreement, with ac. bane. The principle was helden to be good, & the latter not. This distinction is now overruled. Since it is helden that the delivery of property is a sufficient consideration for the agreement. There is indeed, a Solecism, in saying that a Depository is not bound, under his agreement, is furnished an a valuable consideration. For if there is a consideration, he comes to be a Depository.

2^d May 919

186

186 p. 96

186 p. 96

186 p. 96

186 p. 96

"It has been helden, that if the bailee delivers goods to the bailor, in a chest, keeping the key himself, that the bailee is bailor for the goods, as well as for the chest. The doctrine, however, is not law. This was held down in the case above cited, in unqualified terms: But Lord North in Coppes & Barnard, sup maintained the rule, in terms equally unqualified. For said he the bailee has as little power over them, when they are out of a chest, as to any benefit he might have by them, as when they are in a chest, & he has as great a power to defend them in the one case, as in the other.

2^d May 919

But it appears to me that the liability of the bailee depends upon his knowing whether there were goods in the chest or not - a circumstance not noticed by either of the judges in their opinion. For if the contents of the chest are not known how can he be considered as the bailee? For he cannot be supposed to know

But the chief question is whether one of the said
things is concerned at the nature of the contract, he would
also be ignorant of the degree of loss which was
 requisite. This I concede, is the true rule. ^{June 5-4}
that ⁶⁻¹⁻⁴⁹ ¹⁸⁵⁷
if the bailor does not know the contents of the thing
he is not liable as bailor, & so vice versa.

Since this rule bears a strong analogy to other cases
of insurance: for if the owner of goods covered them
in a ship, it avoids the policy. But inconsistent of
analogy, the rule is clear on principle.

Even a special agreement by the bailor "to keep
the goods safe," will not subject him at all events.

It seems that here, he will not be liable for any ^{L. Rep. 9/1}
loss or damage, unless there is some default on ¹⁸⁵⁷
his part. As, e.g. the goods are lost by ¹⁸⁵⁷
a fire, — by inevitable accident — or by such ¹⁸⁵⁷
an act of violence, as he could not resist. For ¹⁸⁵⁷
these losses, he may render himself liable by an
express agreement to that effect, but not by merely
agreeing to keep safe.

If the depository retains the goods, in viola- ¹⁸⁵⁷
tion of the contract, he becomes liable to the bailor. ¹⁸⁵⁷
I may be made to answer, either in a lump sum, ¹⁸⁵⁷
in kind, or in money. These three are concurrent rem-
edies.

2. Commodatum

When the bailment is
 account to accrue to the bailor alone, the rule is that
 1. Bow. 8. 249.
 But 72 he is liable for the slightest neglect. In this kind
 1. Mac. 244
 1. Bow. 91. of Bailment the benefit is wholly in favour of
 the bailor; & he therefore, must be liable for the slight-
 est neglect.

It seems to be a general rule on this subject
 that the law is by more than that, the borrower is *pro*
ma facie liable. But he may discharge himself
 1. Mac. 244 by showing great care on his part. For the law
 only requires great care, & does not subject him, at
 all events. E.g. the borrower commits the goods
 to a person of known care & great fidelity to re-
 turn them to the lender & they are stolen, he is not
 liable. The meaning of the rule is that there is
prima facie evidence to subject the bailor. But though
 the bailor is not in general, liable for loss by such
 1. Bow. 916 force as he is unable to resist, because against this,
 1. Bow. 257, one must vigilance one no protection; yet if by his own
 1. Bow. 95 negligence & want of care, he places himself in a sit-
 uation where he would be liable to be robbed, he will
 be liable for a loss occasioned in his negligence. The
 rule is that Robbery is *prima facie* evidence to ex-
 onerate the bailor.

A borrower is not generally liable for losses by inci-
 dental accidents. But he is liable, or many other bailors
 may subject himself to losses, by placing his goods in
 the hands of a borrower of a house to go on a particular jour-

9.
giving gain on another, & the the horse is killed
by bolting, he is liable for the loss. For the moment
he is released from the contract of bailment, he becomes
a wrong doer & is then in possession of the horse, as
his own wrong just as much as if he had originally
taken him by an act of trespass. So if I borrow a
boat to go to a particular place, & start when the
boat, in all probability must be lost, I am liable.

3rd Locatio et Conductio. In this kind of bail-
ment the bailor requires a qualified property in the thing
bailed & the bailor an absolute right to the hire. It is then
advantageous to both parties. Ordinary diligence only
is therefore to be required. And this I take to be
the true rule.

In the case of Coggs & Bannister it was said that the
bailor was liable for the slightest neglect. Why then is
this class of cases distinguished from the second? In those
cases slight neglect subjected the bailor, & if he is then li-
able for the same the distinction between the second
& third kind of Bailment is entirely illogical. The
opinion of Lord Holt in Coggs & Bannister was obiter,
and not a judicial decision. Sir W. Jones expressly denies
it to be law: & even Lord Holt himself & all his follow-
ers must that there is a difference in the liability of bailors,
however, for they say that the former are prima facie
excused in the case of theft, & the latter not.

At any rate, it must be found that the pawnee, the carrier &c are only liable for want of ordinary care. And when it is considered that the opinion of Lord Holt is only a dictum, unsupported by legal principle or by any judicial decision, it must be admitted, that the rule is correct as above laid down.

2nd Radium, pledge or pawn. This is a kind of bailment accounts bound to both parties—to the pawnee, he performs him a security for his debt—to the pawnor, he furnishes, or extending his credit. According to the general rule then, the pawnee is liable only for the want of ordinary care: & so, the law is otherwise established by authority.

4 Co. 89.

But in Southcot's case it was said that the pawnee is bound to keep the goods only with the same care which he exercises about his own. But this is contradicted by the subsequent authorities. Being liable only on the want of ordinary care, the pawnee will generally be excused by robbery—i.e. he is not prima facie liable. But if the property was exposed to robbery as in own robbery, then he will be liable, though the force be such as he is unable to resist.

4 Co. 89.

It is further said in Southcot's case, that if the pawnee is stolen, the pawnee is not liable: because one Lord Coke as he has a property in the goods he is bound to bestow no more care upon them than upon his own. But this does not distinguish the pawnee from the depository.

Jones holds incidentally, that the pawnee is liable
 in case of theft. For he says the theft would not have
 happened had due diligence been used. But
 I think he is equally wise from the truth with
 Lord Coke. Whether ordinary care was used must
 always be a question of fact to be left to the jury. Jones
 himself, in another place, says that the pawnee
 is liable for theft, unless he can prove an extraordinary
 case. Here then he presupposes that theft is not
 to be committed without the taking of an extraordinary case
 which is a greater degree of care than the pawnee
 is required to exercise. It is settled that a factor,
 who is bound only for the same care as a pawnee,
 is not liable for a loss by theft if reasonable care was
 used. This was held in the case of *Baggot v. Bland*.

The pawnee, like every other bailee, acquires a qualified
 property in the thing pledged. But his interest de-
 termines by payment, or tender, or the way appointed,
 and the whole interest reverts to the pawnor.

If therefore, after payment or tender, or according to the
 for the restoration of the pawn, the pawnee still re-
 tains it, he becomes a wrongdoer, guilty of a con-
 version, & is liable for any loss or damage howsoever
 it may happen.

And as the pawnee is required to deliver up the pawn
 after payment or tender, the pawnor is bound in re-
 spective, in certain, either upon writ, distress, or tender.

And the rule is the same, if the refusal to deliver be

Palk. 446.

is made by the pawnee's servant, acting in the
most course of his business for. But this is not the case
when the servant has no right to receive the money
for which the goods were pawned.

Such refusal is an indictable offence at Common law.
For, say the Judges, the creditors may have been deceived.
So it may have done, in any other case, of Bailment,
but a refusal to redress in other cases, does not
constitute an indictable offence. I conceive the
true reason to be, the great damage to which the
pawnee is exposed & the great advantage which might
be taken of his situation. The pledge is supposed to be
given from necessity, either to gain or to continue credit.
It is to the pawnee, who is supposed to be in embarrass-
ed circumstances. Thus, together with the fact, that
the pledge is generally given in secret, I take to be
the reason of the rule. A contrary decision is either
in Rebeld.

In some cases, the pawnee may use the articles
pawned & in others, not. This right is said to be found
on the pawnee's consent, either express or implied.
This aspect will be presumed or not according as the
pledge is likely to be misused better or worse, or not at
all checked by the use. There are few instances where
the pawnee will be impleaded by use — though there may be
some. For, since the example of a settling does exist
in pledge. In such cases the pawnee can sue the
debtor. So where the pledge will not be misused by

Palk. 524.

Palk. 527.

Palk. 72.

Palk. 240.

Palk. 210.

Palk. 379.

as the power may use it, as power, it is said. *L. 100, 917.*
 But if the power uses them, it is at his peril & he *Pub. 72.*
 is liable for any loss or damage however it may be *L. 100, 919.*
 occasioned: (as by robbery &c.) For his right to use
 the power is a mere indulgence, & is a part of his
 duty. The power is therefore entirely for his benefit;
 not for the benefit of the power. It falls then,
 within the operation of a general rule laid down in a
 former part of this title.

If the power is at some expense in keeping the *L. 100, 918.*
 horse, it is a general rule, that he may use it. *Pub. 72.*
 If it is a horse - the power may use him to pay for the *L. 100, 919.*
 expense of his keeping. This rule is founded in justice.

But on the other hand, if the power would be in-
 creased by use, & more especially if no expense is incurred *L. 100, 917.*
 in keeping it, the power has no local right *Pub. 72.*
 to use it, as if e.g. clothes were powered.

Thus here, I will remark generally, that if the power
 uses the power where he is not by law entitled to,
 he becomes immediately, I trust, liable to the power or
 in Groves. I find no occasion to this point: but
 it clearly follows from principle. For the gist of Gro-
 ves is the conversion: and conversion consists in an
 unlawful taking, using or detaining. *5 Nov 20*

And as it is to deliver up, or payment or benefit
 otherwise is clearly an unlawful detaining, & is
 a sufficient ground of Groves.

The distinctions in relation to geese harmless, are
since by Lord Holt to apply equally to geese fauces.

The finder is said to be bound to use the same dis-
cretion of care. But taking it for granted, for the pres-
ent, that the finder can recover nothing from the
owner, for his care, it would seem that he should
be liable only as a depository. He is not, however,

Thos. 9. 7. in strictness a depository. A depository unsec-
1. Par. 3. 252. takes his trust at the request of the bailor & solely
for the bailor's benefit. But the finder is a mere
volunteer. He does it without any request from the
owner. Whatever the reason of the rule may be it is set
aside by authority.

There is a case in Co. Edw. on this subject, which is not
law. A found 20. tubs of butter & kept it, till it was
ruined. B. the owner brought an action of Trover against

Co. Edw. 139. him, & it was holden not to lie. Doubtless, the decision
5. 1. 1. 599. was correct. For Trover will never lie for a mere neg-
1. Par. 243. lect. There must be some misfeasance. But the

Co. Edw. gave an opinion, in deciding the case, that the
finder is liable for no negligent keeping whatever.
Co. Edw. follows that opinion without questioning
it. But it is clearly erroneous.

Hold. 255. The gist of the action was neg. not in the finder.
5. 1. 1. 202. & Trover will only lie for some misfeasance.
Hold. 251.
5. 1. 1. 146.
5. 1. 1. 170.

At Com. Law the finder has no lien upon the

2. 1. 1. 254. goods for his trouble & expense in finding & keeping
2. 1. 1. 117.
2. 1. 1. 651.

them. Since he refuses to deliver them upon sufficient evidence of ownership, I agree with hi. The reason why he has no lien is that there is no price to be given for the goods. A lien is a right created in favor of one in the property of another, by contract or it can be obtained in no other way.

But can the finder recover for his trouble & expense in any action? This question has never been judicially answered. But Chief Justice Byrne in discussing *Q. 10th* 258 the other question, said that a RT would go so far as they could in sustaining an action although the finder has no lien. I cannot conceive, however, how a Court could make one step in supporting an action. For the act done by the finder was a mere voluntary act, for which no action lies.

In *Commonwealth v. Brown*, under our Statute, we have a different case. The Statute makes it no excuse for the finder to locate the goods. - then by our express clause allows him a compensation for his trouble & expense in finding and keeping them. Under our Law then, there can be no doubt but that ordinary care must be used by the finder, whatever may be the result of the recovery. Now, since here he has a compensation, for the benefit is mutual.

But though the finder is generally liable in *trover*, *Q. 10th* 258, nevertheless yet he is not, of course, thus liable. For *Q. 10th* 259, a failure to deliver an account, is not itself, a conversion, but mere evidence of one: for the finder may

have vacated the title of the claimant. But if sufficient evidence of ownership was furnished (so this is for the jury to decide) the finder will be liable in trover, unless he delivers the goods.

With regard to the rights & duties of the owner & finder, a case has arisen in London, which I had before often contemplated. A found goods which belonged to B. & recommended them, & A, for want of sufficient proof of ownership refused to deliver them. B. brought trover & recovered of A. B. then recommended his goods of A, who refused to deliver them on the ground that he had once paid for them by order of B. B. brought his action & it was held that A must pay for them again. This question has never arisen in England. My opinion is opposed to the decision in this Stat. If either should suffer, it should be the owner. For A had paid for the goods unless the order of a Bank. Had he voluntarily done it, the case might have been different. But I take it to be a rule, that where the law compels a man to pay money into wrong hands, it will not compel him again to pay it to the person who was entitled. It is a by to this rule are two very strong analogies to the case under consideration.

And yet if A claims to be executor under a forced will, & in that character receives a debt, by suit, of a note of the testator, & this will is afterwards set aside, the

debtor cannot after wards be compelled to pay the real
creditor. And as it is, if administration is completed of 18. 11. 52.
the a debt has been recovered. Thus in the former case 18. 11. 52.
it is holden that the probate of the will though the will be
voided will justify even a voluntary payment by the
debtor. "Lo 2nd in case of a judicial attachment by
the creditor of a bankrupt, against his debtor, if the
debtor pays he will not afterwards be compelled to pay
the assignees. I cannot distinguish these cases from that
of the finder of lost goods.

Of the pawnee, after having made a tender at the
time of payment or before it is made & recovers, the pawnee
may then recover his debt of the pawnor: - not however
until he has previously made a demand. For after
one tender the pawnor is not bound to make another: he
must be necessary to pay on demand.

If the goods pawned were of a perishable nature & have
perished, yet the pawnee may recover his debt. For the pawn
is not a payment - but merely a security for the debt.

The rule is the same, in case of a maritime ransom bill.
If an a capture by one shipper of a vessel belonging to another
the master of the captured vessel owes a ransom bill & delivers over at his men as a hostage; an action
may be maintained on the ransom bill though the
hostage afterwards dies, or is retaken.

And even while the person remains in captivity in
the hands of the pawnee, he may bind one a demand
to recover his debt, unless there is a special agreement to the contrary.

In the case of a pawn, as in that of a mortgage, if the money is not paid at the time, when it becomes due, (i.e. on the day appointed) the property in the pawn vests absolutely, at law, in the pawnee. See before 3-4th 795.
 1792c. 278.
 Sup. 406.
 2 Ann. 691-2.
 That time, as in case of a mortgage, the legal title vest in the pawnee, but subject to be reverted by payment at the appointed time. Still however, after the time, the pawnee has an Equity of Redemption.

And in analogy to the rule respecting mortgages "once a mortgage, always a mortgage" so it is a rule with respect to pawns "once a pawn, always a pawn". The meaning of this rule is that if the court of law observes that the thing was introduced as a pawn, it shall always remain so, & shall in Equity, notwithstanding any conveyance, be subject to the rule that it shall not be used to the money loaned until the day appointed. This rule is made to protect the pawnee from advantages which might otherwise be taken by the borrower of his necessity.

A Factor cannot pawn the goods of his principal, so as to create a lien against him. For though the factor himself has a lien, for his commission &c. he cannot turn his lien to another. He can not pawn them for a credit to his own use, for that is no part of the business of a Factor. It is a right strictly personal, which is not transferable. If the factor does pawn the goods, his principal, after tendering the sum due to the factor, to satisfy his lien may maintain an action against the pawnee. Can money & Factor claim them for pawn? See? 1st?

After the time of payment has elapsed, the debt not
being paid, the owner sues out the ^{Writ} ~~Order~~ de ^{30th Jan.} ~~Lancaster~~ ^{Hu. 2^d M.}
^{78.}
The sheriff does better. ^{8 John. 9th}

It was once held, that the purpose might still remain
the pledge before the entry of judgment. But I apprehend that
such an admission would not be good. This follows
from the rule that a lien cannot be transferred: and
is inferable from other cases. For it has been held
ever since the time of Smoke that a lien cannot be, reple-
died for a crime; and the reason is that crimes are not trans-
ferable: for it is a well established rule that a man may
perfect what he can acquire in his own right.

There is a case reported in 2. Roman, from which it might at first view be inferred, that such an appurtenant was held on gauge. The appurtenant in that case, was it is true, made before the bill was not filed until after the time of 2. Rom. 674. 675. Payment was made by the possessor was in the same situation as if the appurtenant had been made after the day. All his legal right to the property was gone. It was held by the Court that he who seeks equity must do equity & that the householder should pay not only the debt due, but the money paid by the appurtenant in consideration of the appurtenant.

Again, it is a well known rule of law, that a power 1 Mar. 278
cannot be taken in exception, 252.
but the power is itself 480m. 252.
that I have seen a power well understood in it, it might
be taken Nov. 67.

For the other kinds of the behavior never perfect

1 Barb. 29 his right for delay, or he would advise his interests. But
 4 term. 299 if he forfeit his right to his standing in his place,
 19th Feb. 1799 cannot sacrifice the debt.

But after all, it may be asked, Why may not the law-
er advise? Answer, his interest is a personal one—
 a fiduciary trust is reposed in him, which the law-
 or may not be willing to repose in any other person
 of the innkeeper's selection. Success, the rule is a ven-
 eral one that the bailee cannot transfer his right.

If the pawnee's affidavit were good, & the advance should
 become a bank-note, the pawnee would lose his property. But
 in case of a mortgage, there is no such danger to the
 mortgagee & the rule therefore is that the court will never
 advise his interest.

2 Lam. 30
 19th Feb. 164.
 18th Nov. 350-9.

It was formerly settled that the pawnee must have
 been declined at the time the debt was incurred.

But this is now settled not to be so.

50 L. 144-5.

19th Feb. 1799 was forced by the parties, a tender cannot be lawfully made
 1 Barb. 29 unless during their joint lives. But it is now settled,
 4 term. 258 that in such case the pawnee may legally tender at any

18th Nov. 258.

time, during his own life. But his right to redeem
 is personal & cannot be transmitted. Some time should
 be limited beyond which the pawnee cannot redeem
 but time is the pawnee's life.

18th Nov.
 18th Nov. 228

18th Nov.
 18th Nov. 229.

There being no time of redemption fixed by the par-
 ties, the executor cannot at law redeem. But Bacon
 supposes that a Ct of Equity would let him in to redeem.

When the time of payment is fixed by the parties, the
debtor is obliged to pay on recession, if the creditor dies
before the time of payment. His death does not destroy
the right created by the contract.

And if the creditor does not pay at the day, he still
has the right of redemption.

5th The fifth kind of bailment is a delivery of prop-
erty to be carried or that some other act be done with-
out the bailor to be paid for by the bailee. This includes
delivery of private property to be consigned or sold.
It is delivery to a private person or a firm. This
includes delivery to a date, partner, to the bailee as owner
and not subject to be carried or to be sold or to be delivered to
the bailee by producing it in the account.
The contract includes freight, remuneration, costs,
and insurance although not absolutely necessary.
to be maintained. They are bailee's to exercise discretion and
issue. This is settled on authority as well as on principle.

If goods are delivered up to a private person
and he is robbed of them, by force which he was un-
able to resist, this prima facie excuses him.

If the loss was by theft, on the other hand, he is
prima facie liable. But this presumption may be re-
butted by showing security care etc.

Distinction is to be taken between the case of bail-
ment of a quantity. If silver is delivered to a set-

silver-smith to be made into an ever, this is a mutuum, & not a bailment. The property is absolutely transferred and the silver-smith is liable for any loss, however it happens. The reason is, that by the terms of the contract, the property is to be so entirely changed by fusion, that it cannot be identified, & so is not to be specifically restored. This doctrine is advanced by Lord Kenyon: I should give no decision in the point.

If it requires any qualification, it must be this - that intelligible fusion, it is a bailment. But I apprehend it never be considered as a mutuum absolutely, since it was never contemplated by the parties, that the thing should be specifically restored.

When the bailment is to a person, who is to perform an act of skill in his profession, the law implies a twofold contract: 1st that he will return the goods & 2^{dly} that the work shall be done with skill. But if the bailee is employed to do an act not in the line of his profession, the law implies faithfulness only, & not skill.

It is said by Jones, that a bailee can never be required to insure the goods against fire. To this, there is no opposing authority. But I have some doubts, whether if it was the usual trade for the bailee to procure an insurance against fire, he would not be liable, as for ordinary neglect.

If goods, thus delivered to a private bailee, are lost, he is not to incur any care, while the work remains unfinished, the bailee cannot be answerable for his loss.

2. 311. 20.
Nov. 20.
10th. 32

3 B. 166.
3d. 11. 601.
Nov. 139.
140.

Nov. 140.

2. 311. 1592.
— 1595.
3d. 11. 601.

For it is said, the sailor deserves no benefit. But not
hence why the same reason would not exempt the
sailor from receiving, though the work was finished.
And such I think ought to be the rule.

2nd A delivery to Public or Common carriers.

Persons are carriers, who make it their business
to carry goods for hire - as common carriers - ^{12th. 108}
^{12th. 108} ^{12th. 108} ^{12th. 108}

It seems to have been formerly considered that any person
who sent a carriage by road was a common carrier. ^{12th. 108}
But the rule was extended to persons in the time of ^{12th. 108}
James I. to shipmasters in the time of ^{12th. 108}
Charles I. ^{12th. 108}

Since since the rules respecting common carriers
have been extended to shipmasters, the same as
well as the master of a common carrier - ^{12th. 108}
common carriers, shall be responsible when a ship is sent. ^{12th. 108}
But it may be said that a ship is not a common carrier. ^{12th. 108}

But as said by Lord 7. Geo. 2. for ships which happen
to be the instrument of the master or crew, the owner
shall be answerable to the extent of the value
of the vessel & freight. The owner is liable to the
amount of the whole loss.

If a common carrier, engaged common carriers for
the carriage of goods, upon notice of the time re-
quire to deliver them, he is liable in an action on the
case. But if the voyage or transport is full, the car-
rier is not obliged to take the goods which are offered.
If the roads are bad & he has a sufficient load, or if some
accident prevents the trip - in these cases, he is excused.

The reason of the rule is that by engaging in the business of a common carrier, he has made an implied agreement with the public, that he will carry all the goods which are offered.

But notwithstanding this rule, he may make what is called a special acceptance—i.e. he may refuse to carry the goods and be answerable for them unless he is informed what the articles are, & is paid in proportion to their value.

A disclaimer of this kind being strictly a contract—
 Jan. 144. if there was nothing to impose the operation of the general principle, the carrier would be answerable only for ordinary neglect. And this was the case, until the time of Hen. 8.th

52. 144.
 144. 46.
 144. 2.
 46. 44.
 144. 34.

During the time of Elizabeth, it was held that common carriers were liable, in case of robbery.

144. 27.
 144. 91.
 144. 152.
 144. 102.
 144. 131.
 144. 201.
 144. 10.
 144. 69.

And since that time, it has been fully established that they are liable, for all losses, but those which are occasioned by the Act of God, or the King's enemies.

Lord Coke in the 4th Institute, affirms as a reason for this, that the common carrier receives a reward. But this clearly cannot be the reason—for then private carriers & other private carriers who receive a reward for their services would be liable in the same manner, whereas they are liable only in ordinary neglect. The true reason of the rule is that public policy demands it. When private carriers are made liable, the

parties are usually acquainted with each other. The sea-
man knows whom he trusts. But common carriers must
frequently, from the nature of their employment, be
trusted by strangers. Let it therefore, ^{T.R. 910.} ^{from 145.} ^{Sch. 147.} they they should
collusion so attempt to defraud their sailors, public
policy requires that this be made an offence for all
sakes not occasional by act of God or the King's en-
emies.

Though the common carrier receiving a reward is not
the ground of his liability, yet he is not liable to the same
extent unless he does receive a reward, at for this reason
If he does receive a reward, he is not liable as a
common carrier, though he would be liable by the general
rule. ^{1806 609.} ^{Earl 485.} ^{Ex p. 117 121}

It is then merely a mandatum, as such only is the
liability.

A common carrier then is in the nature of an insurer
against all losses except those which happen by the act
of God, or of the public enemies. "The act of God" is in-
evitable accident, as used in law and synonymous
with by these we mean those acts in which man
has no agency, as lightning, tempests &c. ^{1806 57.} ^{to 110.}

Hence fire occasioned in any other way than
by lightning is not covered as such an act of God. ^{R. 14.} ^{to 110.}
as will excuse the common carrier. In the same
principle it has been held that the act of a servant ^{1806 57.} ^{from 147.}
was not excusable when a cat cat a hole through the
bottom - let in water, so that the goods were damaged.
It is even said that if something of a cat this to

was through the whole, was extremely irregular. But
 this is not true, nor was it upon the principle that
 the case was decided.

Under this general rule, it is not even that some
 more carriers are liable for lapsed by maps etc. There are
 not carriers or public carriers within the rule. But
 for other occasions, as by Private, who are the carriers
 success of last in a kind. Common carriers are
 liable. It is not necessary to say, to constitute
 public carriers that they set under the direction of
 foreign powers or state. That foreign water carriers
 as they are called are not public carriers within the
 rule.

I have observed that nothing is done again, and again
 with the word public in public carriers. But it is not
 necessary to say that the word public should be the unavoidable
 carrier of the law. It is enough to say to what the words
 of the law are to public carriers. But it is true
 that it is not always the words it is necessary for the law
 to be the words of the law. It is enough to say to what the words
 of the law are to public carriers.

There is a case reported in Storrs where the action was
 for a box of goods. The sequence that there were no more
 carriers in a temper with the law. It is not the words of the law.
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But it is not the words of the law. It is not the words of the law.

to save the vessel, & consequently of the cargo. The carrier
is to carry and the cargo. 27.
1. And 200.
1. And 60.
1. And 200.

But in this case as in other cases of cargo, which
has been mentioned, of the common carrier, who
is a negligent officer, the goods to be carried, as of cargo
is public property, he is not exempted from liability.
The carrier is not to be liable in adversary weather.

Wherever the loss happens by the fault of the owner
of the goods, (the loss of cargo) he is not liable.
The carrier is not liable. As if a fire of fire 28.
is required to a carrier while carrying, or some
reason of which, it burns. The fault is the owner's. 29.
1. And 200.
1. And 60.
1. And 200.

I also it is said, that if the wagon or boat is
full of the owner of the goods, forces them on the carrier,
(being willing to take the risk of successful
transportation) the carrier is not liable for a loss. 30.
is not liable to the extent of a carrier's liability.

But I conclude, he must use ordinary care. 31.
1. And 200.
1. And 60.
1. And 200.
When the boat is full the owner of goods, forces them
on deck. The carrier tells him this even so as when
else on the sea is insured the owner must
bear the loss. 32.

In order to subject a common carrier, the goods must
have been lost while in his possession of under his control. 33.
1. And 200.
1. And 60.
1. And 200.
Hence if the owner of the goods, sends his servant in the house, to take the care
of them, the innkeeper is not liable as a common
carrier. But I suppose he would be liable for a loss.

But the owner should receive the whole amount for the carrier, may be supposed for a thousand pounds, when he supposed he was carrying only a box of a piece of tobacco.

Lord Alton in *Stranger* & the 68 of N. H. in a 1st case reported in *Exeter* express a similar opinion, on this subject I think therefore the two cases mentioned may be considered as authoritative.

By a special acceptance, it means a special agreement, that the bailee shall not be liable for loss, unless upon certain conditions. To overtake a special acceptance, however, it is not necessary that there should be a personal communication between the parties. This may be impossible, as the owner of the goods may live in America & the carrier in Europe.

And it has been determined that an advertisement in the newspapers stating the terms on which the carrier will be liable, may amount to a special acceptance. This is not, however, a general agreement, but it may be used to the party from which they may infer, and that the owner of the goods knew of the terms.

Under a general acceptance, when there is no fraud the carrier is liable for what he receives. But if he accepts specially he is liable only for what he engages to carry. It is liable as a common carrier only so far as he receives a reward & he receives a reward only for what he engages to carry. And if there was money in a box, for which he did not receive any pecuniary gain, but

But was concerned as to the quantity. I think he would not be liable. For had he known the amount he would have been more careful — & what would be a security only for a small sum, might be propaganda, for a greater one.

Next as the case may be I doubt whether he ought to be liable for that which he knew the box to contain. For suppose he was informed that the box contained a bushel of potatoes & in fact there was wool in it, known to ruin. Here, were he to leave the box in a house he would exercise a sufficient degree of care, if it contained any what he supposed. But it would be gross negligence to leave it in that situation. Now the bill in this case, might be the producing cause of the taking of the box: & therefore I should ^{not} hold the carrier ought to be liable even for the potatoes.

It is 22nd There is a case in H. Bl. C. where it was held that the carrier was not liable even for what he knew he carried. But that was a case of special acceptance.

I have observed that the liability of a common carrier extends no farther than to those things for which he receives a reward. Hence the owner of a stage coach who

Case K. 25

It is 22nd receives a reward for carrying passengers only & not for their baggage is not answerable for a loss of the latter: But if he receives pay only for carrying goods, as in the case of a common carrier, & liable for loss.

But though a carrier is liable only as far as he receives expense, yet it is not necessary that he should have

occurs the reward at the time of the loss, or that
 there should never been an express promise to pay it.
 For he may charge the fare & recover on a quasi contract
moment. But the rule supposes that he was to be paid,
 & that he has a good claim for the hire. He is not
 bound to trust the owner of the goods, for the hire;
 but if he does, he cannot defend against a loss, on
 the ground that he has not received a reward.

It is not necessary, however to suppose the carrier
 that the goods should be lost in transitu. But if they are
 lost before delivery according to the terms of the bailment
 he is generally liable. Thus if he stops at an inn, on
 the road & the goods are stolen from the innkeeper.
 This is no defence in an action brought by the owner, ^{2 P. 239.}
 though it may & usually does give the carrier
 a remedy against the landlord. The general rule
 is that if nothing is said on the bill of lading, he must
 deliver the goods to the consignee, if he carries them
 to the place where the consignment ends, unless there
 is an established custom to the contrary. ^{3 P. 239.}

If the usage is for the carrier to deposit the goods
 in a warehouse of his own he is then no longer liable
 as common carrier, but only as a third person ^{4 P. 239.}
 would be who had received the goods into his ware-
 house. If he receives a reward for storage, he is
 liable for negligence only.

It is a general rule that if the carrier is a
 merchant who shall be the carrier, he shall bring

Feb. 15th The action is not the same as in the case of
 25. of the action when the action is not the same
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When an action is to be brought against the owners
 of a ship or ship, it must be brought against them
 all & not against any particular individual. For the

10. 40. action arises quasi ex contractu & not quasi ex delicto.
 10. 40. 42. But when one of them has in his own name

10. 40. 42. But when one of them has in his own name
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And upon these principles the Postmaster General is not liable for the act of his subordinate officer. 3 Wash. 448. In appointing them he acts in his official capacity. But the Postmaster General and his subordinate officers are liable for their own faults as civil individuals.

A Common Carrier is liable in the English Courts especially in the old cases, to be liable in the carrying of the vessel & it was formerly usual to state the condition of co-carpentering it. But this is no longer the liability of Common Carriers is by the common law.

The remedy against a Common Carrier when the loss is not by his negligence, is by a special action in the Court, not in France. For France will not lie except there is a conversion & there can be no conversion unless there is a negligence.

But if the goods are sold or given away, then France will lie.

In general, a carrier is liable for the loss of the goods if there is a loss by neglect, the carrier may be placed in an action of assumpsit or in an action sounding in tort.

6th Mandatum. The only difference between this kind of bailment, & the fifth is, that the Mandatary receives no reward.

The difference between this kind of bailment & a depositum is, that the depositary is not by con-

But he does not illustrate the position or state
any authority to support it. I conceive that the same
issue of law is required in both cases.

The general rule is that the Maritime Law is li-
ble only for gross neglect. The case in D. B. was ^{1st} 150
one where two merchants A & B, had imported some
goods of the same kind, in the same vessel, and A
requested B to enter his, with B's own, at the cus-
tom house. B entered them together in the same
manner & in consequence of their being entered im-
properly, the goods were forfeited. A brought his action
against B & it was helden not to be maintainable.

But on the other hand, if a tailor uncalculus gra-
dually to make a coat, he is liable for want of skill.

I have a few additional observations to make with
respect to a failure in an economic & a putative case,
being gross neglect. One basket seems to favour

the opinion by saying that in such case, the bar-
ter was to be made for neglect. This is true, but an
action on the contract will also lie. On this point

there is one serious case which has never been con-
sidered.

A partner in a firm to D. A promising ^{for 66}
without regard to others in D. B. failed to deliver
it & a judgment was taken to be at a point
B. The action of the maritime was taken to be
a sufficient consideration, to support the
contract to have it over to D.

Miscellaneous Rules.

Bailor's right to Lien. This right exists in some kinds of bailments & not in others. Lien properly is called an in rem right, in the fourth & fifth kinds. By Lien, in law, is meant a direct claim or encumbrance upon some specific property of another, for a debt or duty owed by him. Does in the 4th & 5th kinds of bailments. Bailor uses the debt or security right. In the fourth, the delivery, itself, by the express terms of the contract is to create a lien: in the fifth, the bailor's right is founded on his claim to be paid for his services. In the fourth kind then, he has a lien without any thing ex post facto.

Now having got the fifth kind, how is it in the same? The answer is, that the bailor has a lien on the goods because "in law" contract. But it is the nature of a condition implied in law, & annexed to the contract. But none of these ex post facto.

If a third person wrongfully obtains possession of the goods he cannot avoid himself by the lien of the bailor had to keep them from the service. The answer being immediately in which case the bailor is wronged. The bailor is the party who has the lien on the goods from the service.

And even if the bailor is the third person who obtains possession of the goods, the bailor is the party who has the lien on the goods from the service.

1. Nov. 1772 But a lien is always lost, by surrendering of the possession.
 1. East. 2.
 3. 11. 1774
 3. 11. 1774 of parts to the receiver.

And this rule is not a mere arbitrary notion of the law. It is founded on the possession. It is usually a right to retain that which a person has. So because the giving up of the possession is a surrender of the lien.

1. 11. 1775 If there is a special agreement on which the bailor is
 1. Dec. 27. in for his reward he cannot retain the goods. And
 2. 11. 1774 it has been held that an agreement by the bailor to pay a certain sum (without any other agreement of course) the lien. Expressum facit cessare totum.

1. 11. 1774 A factor has a lien upon the goods of his principal
 2. 11. 1774 not only for what is due on
 1. 11. 1774 that particular contract of bailment, but for any
 1. 11. 1774 general balance of accounts due from the bailor.

5. 11. 1774 But it is beyond the authority of a factor to pawn
 3. 11. 1774 the goods of his principal.

2. 11. 1774 Bailors of the second, & third kind have right
 1. 11. 1774 to retain the goods bailed a longer all the while
 1. 11. 1774 during the time stipulated. But this is not a
 1. 11. 1774 security for any specific debt or value so is no lien.

How the rights of third persons may be affected, by bailment.

1. 11. 1774 It is said in some of the books that if a person
 1. 11. 1774 has the property of another, the bailor must recover
 1. 11. 1774 it of the bailor, & recover of the bailor of the bailor,
 1. 11. 1774 not to the true owner: for he cannot determine

the right of the two parties. I apprehend that nothing
 arose or ensued by this rule than that he is justified
 in their according to his bailor & not in some other way
 to the true owner. The rule is laid down as if it were
 only this to rescind. If it were his under the bailor
 would have a corner hand cut right to claim it, which
 is clearly not. In this opinion I am fortified
 by Hall, who says, that if the bailor declines to
 the bailor, for some reason, as the rightful owner
 or he has such action, the declining is a bar to the
 action. This happens, that a decline, after the case
 would not be case the bailor.

I would here remark that if the owner does not exhibit
 sufficient evidence of ownership, the bailor is not
 bound to deliver up the goods. But if he does exhibit
 sufficient evidence, he is entitled to them. Lord Holt
 says in the case of *Boose & Barnard* that if a thief
 steals goods & delivers them to a common carrier, the
 carrier may retain them as much the true owner, un-
 till he is paid his hire. This does not seem to suppose
 that they are to be redelivered at all events to the
 thief.

But of the bailor, in this case, see *Ex p^o*
Smith, at all events deliver them to the real own-
 er at his price. For, in *Smith*, he comes out to give
 evidence of the goods as the act of his master and
 general trust delivered him to the bailor. & that
 he cannot therefore deliver them to the thief owner.

This reasoning is certainly very wide & broken. Can I
 say whether it would have been considered as law.

There has been much litigation between the bailor
 & the creditors & purchasers of the bailee; & indeed
 it is a matter of nice distinction, to determine their
 respective rights, as when the creditor takes his at-
 tachment on the property bailed, or the purchaser
 buys under the supposition that it belongs to the
 bailee.

Small book
 on the subject only
 may be

3th 18
 7-A 10
 2p. 18 566
 7-B 18 220
 7-C 18 340
 2. 18 67

In Eng^d the Stat. 21 Jac. 1. provides that the goods
 & property of another in the possession of a bankrupt
 subject to his own & comparison with the account
 current, shall be considered as the property of
 the bailor. This Stat. includes most of the cases, excep-
 tions which arise between the bailor & creditors &c
 of the bailee. We have no such Statute, but it seems
 to me to be founded on reasonable principles & to be
 merely in affirmance of the Com. Law. ~~There is a small~~
~~book on the subject in one of the books.~~

This Statute contains but one case of bankruptcy, but
 indeed the contract between bailor & the purchaser
 or creditor & bailee is not of much consequence in other
 cases. So if the bailor is solvent & the bailee insolvent
 some account must be taken for a breach of his con-
 tract of bailment. The creditors of the bailee are allow-
 ed to come upon the goods, not strictly on the ground
 that there was any fraud practiced between the bailor & the
 bailee, but because of the facts which the

for a particular purpose, does not bring them within the
 Statute. Thus, if I purchase in New York an assortment
 of goods, and leave them in possession of the vendor un-
 till the packet or wagon is ready to transport them, ^{supra}
 this is not a possession de se within the Statute. It cannot
 be taken without a breach of trust - therefore has not the
 effect of a possession de se.

The rule is that the bankrupt must in all respects ^{7th & 8th}
 appear to have been the owner. Hence, if from the nature of his
 business, there can be no presumption of a possession
 the case is not within the Statute. This rule is illustrated
 by the case of a factor before mentioned. He has pos-
 session of the goods, but the nature of his business is such
 the case of his being the owner of them. He is a
 vendue merchant. In such case, he cannot be presumed
 to have been the owner of the goods.

In the common cases of bailment where the bailor
 has not by the Statute the "possession or con-
 trol" of the goods & where he is not a bank-
 rupt, the general rule is that the factor may take
 the goods from the owner or purchaser of the bailor
 or from any person who has them in trust, ^{18th & 19th}
 person, and use them in his own account. ^{20th & 21st}
 of a letter to Lord B. for a summary - ^{22nd & 23rd}
 is no evidence of a possession ^{24th & 25th}
 for the purpose of the Statute. This is
 universally known. Hence, if a
 factor has the goods of B. it is not his property. A man
 cannot be said to have possession of goods if he does not have
 the right to dispose of them.

of a Sheriff takes him in execution, from the grant
 within the Sheriff the creditor, & of the Sheriff's duties
 him, those who are against the interest of the creditor
 within, of him with interest to personal property of local
jurisdiction. In the case last cited of Factories, &c.
 all the recent provisions on the subject are to be
 25. 1876 The rule is complained of as a harsh one in law as
 42. 648 see in Form Book, but I do not know how a more
 rational one could be adopted.

There is an exception to the rule, in the case of a
 26. 27 or any circulating medium. If the holder trans-
 18. 581 fers this the holder can never recover it. This is a
 27. 1516 factive commercial reputation. Money it is
 28. 435 29. 596 since, has no cash marks. And it would be extreme
 to overstate, if the receiver of monies were always
 obliged to enquire into the holder's title to it.

I have already remarked that we have no Statute on
 this subject but the principles by which our bills
 have been governed are the same as those in the
 20. 1876. They consider the Statute as in affirmance
 of the common law maxim that where one of two in-
 nocent must suffer by the act of another he shall
 25. 70 bear the loss who has enabled the third person to de-
 fraud the other.

It is a maxim of the law that a person who has
 a right to a thing shall not be deprived of it by the act of another
 but the law is not so strict in cases where the third person
 is a bona fide purchaser for value and the Statute is
 in affirmance of the common law.

might be very willing to trust his horse with B - a careful housewren man - but the same time very unwilling to entrust him with C, the creditor of B, who seems as both a house & a son & a son.

And this is precisely the reason why a person cannot be taken because the document is a personal trust.

I conceive therefore that in the case is clear on principle - as the authority in P. 10. is at best, but a dictum. That the use of a thing bailed for hire cannot be taken in execution by a creditor.

End.

Actions to which the Bailor & Bailee are entitled against each other, & against Strangers.

It is a general rule that the bailor may sue in trover ^{1. Act. 4.} or replevin ^{2. R. 10. 265.} or action against a stranger ^{3. R. 10. 265.} who wrongfully takes or injures the property, which in the bailor's possession. The bailor has the general property - that is he has all the right to the property except the interest which the bailee has in it. & this right is the foundation of his action.

This rule will hold, as the case may be, though the bailor has never had the actual possession of the property. ^{4. R. 10. 265.} As if a seller sends to C, who is one in the hands of B - then an action will lie for B. ^{5. R. 10. 265.} If B obtains them C can sue for them. In this, property means after it is right of possession, & the right of possession.

is concluded to be a constructive possession.

The following rules will enable you to determine in all cases whether the bailor has a right of possession & so, in legal contemplation a constructive possession:— If the bailor has a right at any time to repossess and the delivery to the bailee is taken the bailee is to be deemed to have possession. He has in law a constructive possession. This rule will determine in all the cases of Bailment. Goods bailed to a Depositary may be repossessed by the bailor & so he has the constructive possession. But property bailed to a hire or borrower cannot be repossessed by the bailor until the time of bailment has elapsed. Till that time, therefore he has not the constructive possession, unless the hire or was in franchise (L. 400). In the fifth & sixth kinds of bailment, the bailor has retained the constructive possession.

But when the hirer is not, at the time of the delivery, a right of possession, i.e. a constructive possession he cannot, I conceive, maintain an action against the wrong doer. As if I bailed for hire to B for six months I cannot at that time bring an action taking by & of the property. I cannot maintain an action. For he has transferred his right of possession to B & so is answerable. B has therefore the actual possession & the right of possession during that time. Of course I can have no constructive possession. The constructive possession must be in the

42. 419
 1. 2. 4. 13
 1. 2. 9. 1
 1. 2. 65.
 2. 1. 4. 576

It is desirable to have for a short time the
 the whole of the property.

After the time of husband and wife, the
 the whole of the property is, property of the husband
 taken in a joint action, which is itself, a conversion, for
 in such a case, an action.

The goods in the possession of B. are given to C. by
 the owner, the father, & there is no delivery, of a
 stranger, but then to himself from the possession.

95
 957

If C. cannot maintain an action for them, then
 a gift is made without delivery, and not given
 for the purpose, C. is then within the clause for
 conversion, and the right of possession, & of consequence, can
 not maintain an action.

95
 957

But slight acts will amount to a delivery. Thus, may
 be a construction, as well as an actual one. Thus the delivery
 of the goods to a store where the goods are, is considered
 to be a delivery of the goods. So a delivery to the Owner's
 servant is a good delivery to the owner himself.

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 1. 2. 137

If the bailor gives goods to a stranger, the bai-
 lor cannot maintain an action for this taking.
 For the taking was lawful, he having received them
 from him who had the right of possession. But if
 on demand, accompanied with sufficient evidence of
 ownership by the bailor, the stranger still refuses to
 deliver them, the bailor may maintain an action for
 them. This wrongful detainer is a conversion.

He is liable

It is clearly agreed in the books, that most bailors
 may maintain an action against the wrongdoer,
 for an injury done to the property, while in their possession. ^{What is the}
 session. I conceive that all bailors may maintain ^{the} _{action}. ^{13. 8. 69.}
 Here action. It has been said, that a bailor is to ^{5. 13. 69.}
 maintain an action against a wrongdoer ^{15. 2. 62.}
 upon his liability over, & that hence a bailor can ^{13. 8. 69.}
 not maintain an action.

I apprehend that this is not the true ground of the
 bailor's right of action. & if so were, I think, that
 the conclusion drawn from it, would not follow.

I conceive that the bailor's right of action is
 not founded on his liability over to the bailee. It
 appears to me, that the true ground is his special
 property in the thing bailed. He acquires by the bail-
 ment, a right of possession against all the world but
 the owner. Now this special right in him, is absolutely
 inconsistent with the same right in another. ^{13. 8. 69.}

If a person has a right, he must have a remedy
 commensurate to the injury, which is done to that
 right. This is one of the fundamental principles of
 law. But the wrongdoer by the supposition de-
 prives the bailor, or injures him, in the enjoyment
 of his right of possession. Clearly, then, on principle,
 the bailor may have an action. But I do not mean

to say, that the question was regarding the
 bailor's right to maintain an action, See 6. 1. in

2. 508

may sustain the opinion of the Court, & as the Master
may maintain the action, because he has a property
in such a property as will enable him to keep
the thing bound against all the world except the
owner. But surely his right, in this respect is
not greater than the depositor's. {See Leitch v. The
Finance stands on the footing of a bailee, & is liable
for ordinary neglect. The depositor, on the other
hand, is not.

2. 534

2. 534

Again, it is well settled that if a servant
of his master's goods, he may sue in his own
name against the owner on the title of Writ.
But he is certainly, not liable over to his master. His
right to the action depends upon his having the right
of possession against all the world, except his master.
And the law in the first case cited above, that
the servant may maintain the action, because he
virtually possesses some right or interest in a property.

13. 50. 69.

It is also laid down, that a servant who has
his master's goods may sue an applier of robbery,
not because he is liable over to his master, for
he is not.

So also, if a horse be stolen from a servant, the con-
tinuance of a lease. The right in the servant's horse
over the timber, if taken over as in a trespass.

7. 2. 371.
13. 50. 40.

It was also, more recently decided, that a
servant who has a property in a property, he may

11th 1807. If the bailer delivers the goods to a stranger he must
 5th 1808. continue in a shop against a wrong place. But this
 20th 1808. transfer is a mere disposition, for the bailer cannot
 transfer his right in the goods.

The auctioneer in every market is a stranger, and
 the buyer of goods at a public sale through the purchaser
 11th 1807. holds the real action, at the time when he bought
 20th 1808. them. The rule is the same with regard to a factor. But
 11th 1807. a common servant who contracts for goods in the name of
 his master, cannot sue in his own name. The auc-
 tioneer & the factor contract, in their own names.

3d 1809. When the bailor & bailer both have a right of action against
 11th 1807. the wrong doer there can be but one recovery. I recover
 20th 1808. by one, will bar an action by the other.

And with regard to the right of priority, Rolle says,
 it belongs to him who first recovers. I think this is con-
 11th 1807. sistent. For then, there would always be a contention for
 the first chance of trial. I conceive that he who first brings
 the action, acquires a right to pursue it to judgment & thus
 11th 1807. attaches in himself a right to recover. This is the rule in
 20th 1808. a real case. It was so decided in a case of an
 appeal of Robbery, where the servant was robbed & of
 course both master & servant had a right of appeal.

It also appears from the case of Wright that the com-
 11th 1807. mencement of the action attaches the right of recovery to the
 20th 1808. plaintiff, & that he is entitled to a recovery by the law.
 It is a rule that a plaintiff will not say that his action

By this, I mean that there can be but one recovery for the same thing. If the bailor recovers a sum for the wrong done for the full value, the bailor cannot recover for the same. so vice versa

But if the bailor had recovered the full value the bailor may still sue for the special damages resulting to him from the wrong, taking no other notice of the recovery. He may elect to maintain the action on the ground that his wife was another person injured by the same wrong. The maxim is that if there is damnum cum injuria an action will lie.

If the bailor himself takes the property, before the contract of bailment is terminated, the bailor may maintain a special action on the case against the bailor. It seems to be a question in the books whether Treghard or Trover will not lie. My own opinion is that Treghard will not, for the injury complained of is special. Lord Coke says they will. But Bacon seems to question it.

La Bate it is said that the bailor may maintain Treghard or Trover that the bailor's ownership will go in mitigation of damages. But I conceive, that trover can be maintained to full value. I have had a notice to repair the whole amount. But I have not done so. It prevents me, not releasing the property, the price in mitigation of damages. Hence the case will over-valuation. The value of the property must be ascertained.

in exchange. It is not even a presumption case
 of exchange. For the exchange to the bailee may be
 more or less than the value of the goods. That
 is possible, for in no other case will more or less
 pass to, unless the value of the property is the sum
 of exchange.

For general, the bailee cannot maintain an action
 against the bailor, except in the special action, *pro* ^{1752. 207.}
 in the case, as an action for neglect on the bailee's part, ^{1752. 207.}
 or, or proven. Property will not be, for the bailee
 cannot lawfully in the possession.

If the bailee willfully wrongs the property, *pro* ^{1752. 207.}
 he will lie. In cases of *pro* ^{1752. 207.}
 all liability, & the value shall not avail him *pro* ^{1752. 207.}
 his character to debate it.

(1752. 207.)

continue or remove his suspension. Thus the law
must be executed.

But I conclude this over not to take away the
common law remedy by indictment. I conceive that
the remedy furnished by the Stat is commensurate.

Duties of Innkeepers

§ 568 The duties of Innkeepers, are principally the entertain-
ment of travellers & the keeping of their effects.

§ 569 An innkeeper refuses a the unreasonable price
of a student, to entertain a boarder, without sufficient
cause, he is liable not only to an action on the case
by the traveller, but also to an indictment. Every one
who engages in the business of an Innkeeper, implicitly
contracts with the public to entertain guests & take care of
their effects. For breach of this contract, he is liable to the
traveller. It is matter also of public convenience that
guests should be accommodated, & on this ground, he is
liable to the public. But for sufficient cause, the innkeeper
may refuse to receive a guest, as if his house is already
full, or if his family is sick &c. And the law is very nar-
row in admitting excuses. But he must not refuse
from whim or caprice.

§ 570 An innkeeper is not responsible for loss to the prop-
erty of his guests, but to his goods, money. If the guest is
lost, the Innkeeper is not liable.

But though his care & oversight does not extend to the
person of his guest, yet by his contract of care &c. as an

Walker clasped Luther and under the Chandel of
baited his transatlantic. This is not correct. Backs
the remembrance is much stronger than before in our
hands and our bodies a few 2nd hand. Main part of
the 6th kind are never to persons & actors in their
public capacities. But always to private individuals
or those who act in their private capacities. Besides
whose houses are baited by the guests to the Church
or he does receive a reward. As to those then he
is clearly not a transatlantic. Just as, indeed he
is not with respect to the inanimate objects for
he thus obtains another pair, just control to wit, the
entertainment of transatlantic. And, indeed the body
of his effects are to be considered as, out of the
control of the body, in the same way as he has
the work. Think through the same, with 2nd hand

The defendant then being mutually advantageous, the
 Lindeker, according to the several rules made in our
 laws, for such cases. But he was not of this
 10 folios not made void by law to the same extent
 as a common carrier.

5th He is liable for all losses occasioned in the
 8. B. 33-1 each of his servants in any case. If his servant opens
 the 7th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21th 22th 23th 24th 25th 26th 27th 28th 29th 30th 31th 32th 33th 34th 35th 36th 37th 38th 39th 40th 41th 42th 43th 44th 45th 46th 47th 48th 49th 50th 51th 52th 53th 54th 55th 56th 57th 58th 59th 60th 61th 62th 63th 64th 65th 66th 67th 68th 69th 70th 71th 72th 73th 74th 75th 76th 77th 78th 79th 80th 81th 82th 83th 84th 85th 86th 87th 88th 89th 90th 91th 92th 93th 94th 95th 96th 97th 98th 99th 100th 101th 102th 103th 104th 105th 106th 107th 108th 109th 110th 111th 112th 113th 114th 115th 116th 117th 118th 119th 120th 121th 122th 123th 124th 125th 126th 127th 128th 129th 130th 131th 132th 133th 134th 135th 136th 137th 138th 139th 140th 141th 142th 143th 144th 145th 146th 147th 148th 149th 150th 151th 152th 153th 154th 155th 156th 157th 158th 159th 160th 161th 162th 163th 164th 165th 166th 167th 168th 169th 170th 171th 172th 173th 174th 175th 176th 177th 178th 179th 180th 181th 182th 183th 184th 185th 186th 187th 188th 189th 190th 191th 192th 193th 194th 195th 196th 197th 198th 199th 200th 201th 202th 203th 204th 205th 206th 207th 208th 209th 210th 211th 212th 213th 214th 215th 216th 217th 218th 219th 220th 221th 222th 223th 224th 225th 226th 227th 228th 229th 230th 231th 232th 233th 234th 235th 236th 237th 238th 239th 240th 241th 242th 243th 244th 245th 246th 247th 248th 249th 250th 251th 252th 253th 254th 255th 256th 257th 258th 259th 260th 261th 262th 263th 264th 265th 266th 267th 268th 269th 270th 271th 272th 273th 274th 275th 276th 277th 278th 279th 280th 281th 282th 283th 284th 285th 286th 287th 288th 289th 290th 291th 292th 293th 294th 295th 296th 297th 298th 299th 300th 301th 302th 303th 304th 305th 306th 307th 308th 309th 310th 311th 312th 313th 314th 315th 316th 317th 318th 319th 320th 321th 322th 323th 324th 325th 326th 327th 328th 329th 330th 331th 332th 333th 334th 335th 336th 337th 338th 339th 340th 341th 342th 343th 344th 345th 346th 347th 348th 349th 350th 351th 352th 353th 354th 355th 356th 357th 358th 359th 360th 361th 362th 363th 364th 365th 366th 367th 368th 369th 370th 371th 372th 373th 374th 375th 376th 377th 378th 379th 380th 381th 382th 383th 384th 385th 386th 387th 388th 389th 390th 391th 392th 393th 394th 395th 396th 397th 398th 399th 400th 401th 402th 403th 404th 405th 406th 407th 408th 409th 410th 411th 412th 413th 414th 415th 416th 417th 418th 419th 420th 421th 422th 423th 424th 425th 426th 427th 428th 429th 430th 431th 432th 433th 434th 435th 436th 437th 438th 439th 440th 441th 442th 443th 444th 445th 446th 447th 448th 449th 450th 451th 452th 453th 454th 455th 456th 457th 458th 459th 460th 461th 462th 463th 464th 465th 466th 467th 468th 469th 470th 471th 472th 473th 474th 475th 476th 477th 478th 479th 480th 481th 482th 483th 484th 485th 486th 487th 488th 489th 490th 491th 492th 493th 494th 495th 496th 497th 498th 499th 500th 501th 502th 503th 504th 505th 506th 507th 508th 509th 510th 511th 512th 513th 514th 515th 516th 517th 518th 519th 520th 521th 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688th 689th 690th 691th 692th 693th 694th 695th 696th 697th 698th 699th 700th 701th 702th 703th 704th 705th 706th 707th 708th 709th 710th 711th 712th 713th 714th 715th 716th 717th 718th 719th 720th 721th 722th 723th 724th 725th 726th 727th 728th 729th 730th 731th 732th 733th 734th 735th 736th 737th 738th 739th 740th 741th 742th 743th 744th 745th 746th 747th 748th 749th 750th 751th 752th 753th 754th 755th 756th 757th 758th 759th 760th 761th 762th 763th 764th 765th 766th 767th 768th 769th 770th 771th 772th 773th 774th 775th 776th 777th 778th 779th 780th 781th 782th 783th 784th 785th 786th 787th 788th 789th 790th 791th 792th 793th 794th 795th 796th 797th 798th 799th 800th 801th 802th 803th 804th 805th 806th 807th 808th 809th 810th 811th 812th 813th 814th 815th 816th 817th 818th 819th 820th 821th 822th 823th 824th 825th 826th 827th 828th 829th 830th 831th 832th 833th 834th 835th 836th 837th 838th 839th 840th 841th 842th 843th 844th 845th 846th 847th 848th 849th 850th 851th 852th 853th 854th 855th 856th 857th 858th 859th 860th 861th 862th 863th 864th 865th 866th 867th 868th 869th 870th 871th 872th 873th 874th 875th 876th 877th 878th 879th 880th 881th 882th 883th 884th 885th 886th 887th 888th 889th 890th 891th 892th 893th 894th 895th 896th 897th 898th 899th 900th 901th 902th 903th 904th 905th 906th 907th 908th 909th 910th 911th 912th 913th 914th 915th 916th 917th 918th 919th 920th 921th 922th 923th 924th 925th 926th 927th 928th 929th 930th 931th 932th 933th 934th 935th 936th 937th 938th 939th 940th 941th 942th 943th 944th 945th 946th 947th 948th 949th 950th 951th 952th 953th 954th 955th 956th 957th 958th 959th 960th 961th 962th 963th 964th 965th 966th 967th 968th 969th 970th 971th 972th 973th 974th 975th 976th 977th 978th 979th 980th 981th 982th 983th 984th 985th 986th 987th 988th 989th 990th 991th 992th 993th 994th 995th 996th 997th 998th 999th 1000th

which happened the act of God, & the said owner, the
plaintiff, is not liable. That the same is not liable, as
a riding animal, as he is liable, the said owner
is, as a person, because the defendant, that he is liable, as
he otherwise. For it has been said that by the defendant
the said keeper was excused, as he is incolable accident
entirely, but he was not told in what the breach is
in it. It seems, then, not to be a question. But it
thinks, that every one of the plaintiff's wife, as to
the case of common law, is not liable, that is, himself
and.

It was found, and by Lord Coke that the said
keeper was not liable, in the case of some, as against
But this doctrine has been approved, as averted in the
case of the plaintiff, and it has been decided that in the
case of the plaintiff, of the defendant's case will not be
the same as the plaintiff's.

The said keeper is liable, as a person, for those
goods which are in the keeper's possession. These words, however,
include his stables & outdoor, where he keeps his
guest's effects. - If the said goods are removed from the
house by means of the plaintiff, & thus lost, the said keeper is not
liable. But it is otherwise, if the property is removed by or
over of the said keeper. He has no right that to remove
it, if the loss of the goods is taken from a stable or
outdoor where he is provided by the said keeper's order,
the plaintiff is liable, for the loss. But when the loss
is taken in a stable or outdoor, at the request of the plaintiff,

Nov 4. The roomkeeper is not liable in such. Though
 if the house is lost by accident, or want of necessary
 care, as in case of fire, the housekeeper is liable
 on the basis of the agreement.

Nov 4. Since the law is the law of a small place, & the
 case, where the street trades are subject to the same
 law, that neither street or shopkeeper, nor even in some
 its title, is a subject of property. These will be paid
 seasons for refusing to receive a guest. But having
 received him in the capacity of an innkeeper, he must
 discharge the duties of the office. If he does himself,
 he should provide those who are not, to assist him.

Nov 2. What an infant in the character of an Innkeeper
 is not liable in that capacity. He is protected by
 his privilege. For an innkeeper's liability arises
 quasi ex contractu, or the innkeeper is not liable on
 his contracts.

Nov 1. If an innkeeper refuses to take a guest, on
 reasonable grounds (as that his house is full) and
 he will not be an exception—being willing to take
 his chance as to the accommodation of himself &
 suppose, the Innkeeper is not liable for a loss. This
 rule is analogous to the one regarding common carriers
 & the carrier, in both cases, is the same.

Nov 1. If the housekeeper consents to the guest, and
 he does not get along, the housekeeper is liable. The innkeeper
 Nov 1. He is not liable. But it is not settled whether he must be
 Nov 1. He is not liable to him to take the guest, as in the case of a common carrier.

I think the inn keeper, in such cases, ought not to be subjected. If the guest will not, or cannot, take the trouble to lock his own sword, he ought to be responsible.

The inn keeper is liable, though he is ignorant of the kind or name of the goods entrusted to his care. This makes correct in my opinion as to inn keeper, though not as I have before observed as to depositee. The depositeary is chosen by the bailor & is not bound to use more care with the goods than is used with his own of the same kind. But perhaps we are often disposed to think differently - it would be very unwise for them, in many cases, to let what were the contents of their treasuries. But in the case of a traveller, there is no reason of kind.

But is the Inn keeper liable if his guest is accosted? I conceive that his liability in such cases is like that of a stage carrier in like situation. The reasons in both cases are the same. The guest is not bound to resist his own idle curiosity: no man can resist: but he must not sway.

The Inn keeper's liability extends no farther than to travellers & to boarders who pay the same price as travellers. He is not held as innkeeper for lodges which happen to neighbours who come to his house, nor boarders who pay only the usual price for board. He is not bound to lodge a gentleman, or to furnish him with arms, or to let his room, he is not liable to him as an innkeeper.

But when he enters the house, a man he never before
 he is in the possession of the law, and is the intention
 of a prison, where there is no law, and no contract that
 the service man was him to law, we had beginning of
 the receiving is voluntary. "Vice the law, it is in ^{the} ^{pr-}
 the nature of a service, without the consent of the ^{the} ^{pr-}
 source. But in case of a service the voluntary are
 the law, voluntary, he becomes a free agent.

The law has been in the house and no offi-
cer of the law, there no more are any than 3 tho-
gh even, before a sale are the law and no ex-
ception.

But if the master be voluntary servant the
man or house is to depart, he is in some upon
the principles above is in some. There is no
particular method in the law.

(20th)

Actions on contracts.

67

Covenant-broken, - by James Coules Esquire

This action is founded on a covenant, for the breach of which, a recovery is claimed.

1 Burr 526
Trotter 340, 45
1 Burr 324, 45
Exp. 266

A covenant is a contract or promise written & sealed;
(being a species of a genus) either be deed indented or poll.

But though by deed indented, it must be sued upon, if sealed by the covenantor though it is not by the covenantee.

Co. 8th 212.
Exp. 266

The usual remedy at law is by an action for damages. Though Debt will lie on a covenant to pay a sum certain, or where the damages can, by assessment, be reduced to a certainty. E.g. he is on a covenant to pay so much for board, for woods, by averring that there was such a quantity.

St. 1089.
Hud. 167.
3 Lev. 483.

But where the covenant is to do "something" in specie (i.e. to convey, execute &c.) the most common & proper remedy is by bill in Chancery, for specific performance.

1 Bac. 526.
1 Atk. 37, 139.
176.
2 Bro. 54.
1 P. W. 97

If the matter of the bill shows a right to damages only on the covenant, it is not returned, for damages are not ascertained by the conscience of the Chancellor.

But even in these cases (i.e. where the remedy is in damages only) if the relief prayed, is more consequential, or collateral to a ground of performance.

which property is in land in land, the bill will
 be returned. For example, where a matter of
 2. Rev. 6216. land is mixed with the damages. It is said that
 1. 89. 32. 25. on the covenant at law — It files a bill for an
 1. Dec. 67. injunction, on the ground of land — It files
 186. a cross bill for relief on the covenant.

If there is no force bill will direct an issue to
 ascertain the damages. In Court, the Court will
 enquire into the damages, or refer it to a committee.

Covenants are either in Deed or in law.

2. 266-

4. 20. Covenants in Deed, are expressly mentioned & re-
 cited in the agreement between the parties.

Covenants in law, are expressed or implied by law.

For example: If A. agrees to sell a certain tenement,
 2. 209. the law raises a covenant, that the lessee shall en-
 3. 266. joy quietly, during the term. This implied covenant arises
 from the nature & form of the agreement.

With respect to the subject, Covenants are again
 divided into Real & Personal.

2. 294. Real covenants are those by which, one binds him-
 3. 294. self to pass or affirm things real, as land or ten-
 2. 129. ements.

A Personal covenant is where the covenant is annexed
 to the person, or concerns the personality only,
 3. 167. as to be an act of service, to pay money, to
build a house &c.

Covenants in law suffer from covenants in Deed in that,
agreements in Deed are founded on the words used,

as amounting to a coven^d express, though the words
are not the most apt, direct, or explicit. (e.g. "p^{ro}-
viding & paying rent" is servicing rent. &c. Then,
as well as the words "coven^d & agree" &c, one at
verbal coven^d & coven^d & express.

Covenants in law are implied, not from the
phrasesology, but from the nature of the contract, statute, stat.
or agreement, which is expressed, i.e. from the express
covenants. (ex: "conceded, demised" &c import a coven^d
in law that the lessor has a good title &c & if defect
is evicted, covenant lies against the lessor. (See
"will not covenant lie before eviction, as on bargain
rent of service? It seems, that it will.

No set form of words is necessary to make, Nov. 280
a covenant. Any words, showing the concurrence
of the parties in an agreement are sufficient. And
would implying an agreement (ex: L^d & L^{ess} have
to L^{ess} "servicing such a rent" or L^{ess} paying such
a rent" & L^{ess} accept the lease, covenant, for rent,
payment, lies against him, though the deed be
void, & the words the L^{ess}'s. The acceptance of
the lease is a constructive coven^d by the L^{ess}.

It is said (1 L^{ess} 241. b. note), that there are coven^d
in law. Q^{ue}. For the coven^d is raised or created by
the words, & terms implied are agreed. &
not from the nature of the contract.

A coven^d must be, as to something had, pro-
vided,

present, or future (Ex. Rest - as when a cover &
 30th. that he has done a thing, & if he has not, shall
 be against him: - Present, as account of present.
Future - as common expression present cover of
 warranty &c.

But promises in law are restrainable by
 express cover. "Expressum facit cessare tacitum."
 As a deed in the words "venire" grant &c,
 30th. 29. (which amount to a cover & that the deed has good
 30th. 30. title & that deed shall quod supra) followed by
 30th. 30. an express cover & against action in the deed,
 as any claimant under him. But the cover is
 not taken for a transit action.

Where there is a deed in conceit of a claimant to
 30th. 29. right, cover is not to be in those words
 for action by a transit. This must mean a transit
action, & not an action under an action
 & title. Otherwise the rule is contrary to all the authorities.

A recital in a deed of a claimant action, cover
 after a cover, on which an action will be: Ex. Rest.
 30th. 29. as it was action - & had been action that A.
 30th. 29. shall give cover. The deed confirms the paid
 30th. 29. action intention (by relation) & makes an express
cover.

But in cover in deed, if the words "cover" &
 not cover, then must be cover which in fact
cover, or the action will not be. But

for: the lease for years coven^t to repair "pro
videtur - it is agreed, that the lessee shall repair
 with timber." This is not only a qualification ^{Sp. 267}
 of lessee's coven^t, but a substitution ^{1 Mol. 518}
 the lessee - But it would have been otherwise
 without the words "it is agreed." It would then
 be only a caution ^{2 Com. 562}
proceed^t to the lessee's ob-
 ligation to perform.

If a lease is made to B. for life, with pro
viso, that if B. dies within 60 years, his ex^{ors} ^{1 Ex. 155}
 shall have the premises, for 50 years, ^{1 Mol. 518}
 and remainder of the 60, this proviso is a coven^t,
 & not a lease. It is void (as a lease) for un^{certainty} ^{Sp. 269}
certainty as to its beginning & length of contin-
uance. ^{Ray 27}

If the lessee executes a bond conditioned for
 performance of coven^t in the deed, it extends ^{4 Co. 30. 11.}
 as well to coven^t in law, as to those in deed. ^{Sp.}
 "reddi et remitti."

If a lease contains a clause "provided & con
dition that the lessee does such and such &c, ^{2 Com. 562}
 this is no coven^t, but a caution to defeat
 the estate. For, whenever a stipulation in a deed, ^{1 Mol. 518}
 is in nature of a displacement, coven^t & does not lie
 at law.

one expressly consents to perform a voyage in a given time, he is guilty of a breach, it is to be performed, though the time was considered impossible to be done beyond his control. The covenant is an in rem against subscribers.

2. St. 768.
13 R. 799.
210.
14 R. 147.
15 R. 366.
270.
16 R. 93.
1. R. 66 83.
17 R. 619.
18 R. 771.

So, if there is an absolute covenant to pay rent for a house, & it is breach season, the covenantor must pay, at all events. Qu. Can Equity relieve the defendant? This question first arose in the case cited from 16 R. 82. 83— but the Chancellor took time to consider, in the which we hear no more of it. From that time, the point does not appear to have been discussed in Equity, till the case in Ambley 39. But that case came off on another plead it was not then decided. The opinion of the Chancellor, however, was in favor of relief. In 1773, in a case before Lord Alford, there was a decision in favor of the tenant. The subject is discussed by Blackstone (15th 266, 374.) His opinion is a strong relief in 8 R. 8. Because Equity cannot control law, but merely admirer relief from one attenuation to circumstances of which Law cannot take notice. Here, it proceeds on the ground that the rule of law was not formed for such a case. 2. Where the equity is equal, the law must prevail.— (It is, in construction, the intention of the institutor, that the lessee should pay at all events.)

In case of implied covenants, such accidents excuse the
 covenantor (as for ex. work in the destruction of a house
 by a tempest, ^{2 Ben. 1639.}
^{1 Bond. 360.}
^{Alleg. 259}
 enemies &c

But it is a general rule, that performance of express
 covenants is not discharged by any collateral matter. (see ^{10 p. 271}
 ampl^d ante, Absolute coven. & to servant of the house benefit)

To the rule, however, that the covenantor is bound
 by an express coven., at all events, there are ex-
ceptions

1. If our covenants to do a thing then lawful, ^{10 p. 270.}
 & a subsequent Stat. makes it unlawful, the Cov. ¹⁸⁰
 is annulled & the covenantor is not bound.

(ex. Cases & to object articles, which are affirmatively prohibited)

2d. Under our constitution (Art. I § 10) which provides
 that no State shall make any law "impairing the
 obligation of contracts," would such a Stat. be void
 as to its operation on a covenant? I apprehend not.
 The law was not made for the purpose of afford-
ing the contract. The effect on the contract is
 merely the consequence of a rule of public policy.

3. If one covenants not to do a thing, which
 is lawful at the time - & a Statute compels him
 to do it, the coven. is repealed - So, I suppose,
 if the act was unlawful, at the time of covenanting. ¹⁸⁰

But if he covenants not to do an act which
 was unlawful at the time, & a Statute making it
 lawful does not annul the covenant.

1. Dec. 68.
1. R. 223.
2. R. 37.
Th. 119.

It is a common rule that when a man dies, his property goes to his heirs or assigns, not to his executor or administrator, to that which is being at the time of making the conveyance. I cover, for ex. as before, to pay all taxes, extends to such debts as were in being at the execution of the conveyance, & not to those of another kind, imposed afterwards.

1. Dec. 222.
Comp. 724.
1. R. 34.
Nov. 164, 175.
1. R. 17.

A covenant contrary to law as to past policy is void. This rule is applicable to all covenants.

1. Dec. 531.
R. 26, 44.
1. R. 127.
Land. 92.

If one leases a personal chattel to another, I covenant that the lessee shall have the use of it for a certain time; & if he becomes incapable for want of repairs, or is worn out during the term, the covenant is not broken: Halsbury contra by three judges.

1. R. 22, 7.
1. R. 26, 619.
Co. L. 214.
Co. L. 214.
2. R. 45.
1. R. 105.
Co. L. 105.
1. R. 105.
2. R. 105.
2. R. 105.
2. R. 105.

Choses in Action are not negotiable at law. Yet they are often assigned, & such an assignee, if he has it, is an implied covenant, & the assignee, that assignee shall have the benefit of them. If then, the assignee receives the money due, or sees to it, he is liable on the covenant.

1. R. 105.
2. R. 105.
2. R. 105.
2. R. 105.
2. R. 105.

It is the practice in tax. to sue the assignee, before, or till he has to gather in the money - he knows the assignment. But it has been lately decided that a notation in "Land" in the same place, not lie, - an action for fraud being sustained against the assignee also.

even but is a good line to a point in a village
 Cambridge. It is not a total release, as
 release, it is a good line to a point in a village

2. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper

an action brought by the former against the latter,
 he, here, — though one cannot, by contract, ex-

2. N.H. 605. 171. a piece of paper with a piece of paper
 slide himself from reaching to the proper point
 of dispute in his own country.

1. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper

are it comes to the Government. But for the
 liberation point, it must be a release to both.

1. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper
 1. N.H. 605. 171. a piece of paper with a piece of paper

He is said to be that he shall not be

1. N.H. 605. 171. a piece of paper with a piece of paper
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Of Covenants used in Conveyances

In all cases of conveyance except quit claims, there are two covenants, or implied. 1. Seisin & 2. Warranty. These are implied from the words "here," "conveyance," etc.

2 to 30, d.
Ep. 366-
Hob. 519.
No. 257.
2 Wash. 320.

On the covenant of seisin, the plaintiff may sue before execution & it is sufficient to show that the grantor was not seized.

Kent. 3.
Ep. 399.
The Inf. 169.
7 to 63

It is otherwise on the covenant of warranty. In actions on the covenant of warranty, it is sufficient to aver that the defendant was not seized without

Kent. 3.
Ep. 391-2.
2. Kent. 14.
omitted

stating who was seized. It is then incumbent on the defendant to show that he was seized, which puts the plaintiff to show better title in another.

Ent. 959.
9 to 60.
Ent. 170.
Ep. 297.

The covenant of seisin is broken by an existing encumbrance on the land - unless it is excepted. But in such case, the breach must be affirmative - stating the nature of the incumbrance in description.

Ent. 100.
Hob. 520.
Ep. 28.
4. Kent. 14.
2 Wash. 491.
2. Mass. R.
48. 487.

On the covenant of warranty, the plaintiff cannot sue till execution, at which time he must state that the covenant was under claim of title, or by confeignment. Also it must appear in the declaration, that it was under claim of title. "Confeignment & title" should be in the caption & it is not sufficient for it to be removed from the caption itself. Other title must appear.

Ep. 901.
Hob. 520.
4. to 30, d.
2 R. 67.
Ent. 345.
18 R. 76.
2 Wash. 277.
2. Wash. 496.
2. Wash. 497.

§ 305. But it appears that the question was under
 L. 27. close title, from the declaration, it need not be
 § 278 formally stated to have been so.

But it is not necessary to state under what
 L. 27. title the eviction was. It is said in L. 278
 § 278. 466. That the plaintiff must show what title.
 This is not true if "what title" means any
 thing more than "good & close title." The words
 in these cases were "separatim et distinctim."

The reason why evictions must be stated to have been
 L. 400 under title &c is that the covenant of warranty
 § 273 extends not to the torious acts of others who are
 L. 278. 466. themselves liable. It is not sufficient to state that
 § 278. 466. the eviction was by suit.

But one may expressly covenant against torious
 L. 273. acts of third persons & then the covenant
 under good & close title &c are not necessary.

So, a covenant against the act of a particular
 L. 274. person, extends to torious evictions by that per-
 L. 274. son.
 L. 274. See.

If the warrantor, himself, disturbs the owner
 L. 400. even by a torious act, under claim of title (i.e.
 by such an act, as to appear to be an assertion
 of title) he is liable on the covenant & the plaintiff
 need not state that the plaintiff had any title;
 L. 278. 466. it is enough that he claimed any, if the act appears
 L. 278. 466. to be (from the declaration) an assertion of right.
 This rule holds even when the covenant is expressed

Phil. 1. at the time of execution & execution. That is at
 2. Mass. R. 448
 1. M.R. 543-
 4. John. 1. the time when the cover^d was broken. See 4. of

John. N.Y. Rep. 1. it is holden that he recovers only
 the considerable interest, & costs of execution. Last
 for the improvement or increased value.

John. N.Y. Rep. 1.

1. N.Y. Rep. 1.

2. Mass. R. 448

2. John. R. 1.

Exp. 295.

Phil. 150-9.

On the covenant of Seisin, the assignee of the
 grantee cannot maintain an action against the
first grantor. For the cover^d was broken, at the
 moment of execution. The right of action, there-
 fore, accrued before the assignment & a right of
 action cannot be assigned.

But it is otherwise with regard to the cover^d of war-
 ranty, - if broken in the time of the assignee, he may
 sue upon it.

5 John. 49.

2. Sand. 71 c.

3 F.R. 166.

4. East 597.

See an action on the cover^d of Seisin, the right to
 maintain a quasi title, after the action brought, is no
 defence.

If objection for Dissension is brought against the
 grantee, he ought to notify his grantor, that he may
 appear & defend. This is called in Eng^l when the
 interest in question is freehold nonclaim in the gran-
 tor. If the feoffee does not appear the feoffee must
 defend, as well as the grantor.

This is the practice in our system for Dissension. See
 2. East 101.
 2. F.R. 166.
 2. East 597.

The usual mode of giving notice, is by a writ
 of summary, called here a writ of warrant.

And assuming for want of otherwise, that the doctrine
here is uncertain as to point in not expressed in

It is a general rule that the executors of the
concedent are liable in himself & are liable in
out namely except where the performance is to
be by the testator personally.

So, they are liable even in the last case of the
concedent was broken in the concedent's lifetime.

So, an ancestor would in fact, more himself his heir
his concedent. There is if I conced to sell land, if
his before the conveyance, his heir will be responsible
in fact, to convey & the money will be responsible to
to the exec on especially if the residual interest
is in fact for the debt. This is a case I read.

It is a general rule that conced shall bind the
heir of the concedent; & also decedent to the heir
of the concedent;

The heir may one on concedent I though not
named, if the concedent unw with the decedent, &
appears desires to continue after the ancestors
death. As concedent with to have the
land in fact.

In conced also, it has been shown, that the
heir, as such, having a sett, by decedent is his
he at law are the ancestors concedent of region,
as well as are his concedent of concedent. That
he is so liable at concedent law there is no void and void.

But sure, whether he is free, or the tenant of service. For there was a distress, arising from the ancestral, and the covenant: And now law makes ^{276.51} the duty of the free to discharge all claims, not standing against the estate.

Of Covenants which run with the land, & contra.

Those covenants which do not run with the land, are called collateral. A distinction being, as it were, as to the affirmance of liability on covenants by the assessor. The affirmance of a lease is liable for breach as deciding his possession (though not named) of the covenant run with the land.

If the thing covenanted to be done, or concerning which some thing is covenanted to be done, was done at the time of the lease, & performed at the time of service, the covenant runs with the land. (as for ex: a covenant to repair the buildings) Here the thing to be done is consequence and necessary to the thing done or performed at it.

So, a covenant to pay rent, which though not substantially, is naturally in case, as a covenant which runs with the land, or is "necessary to the estate."

But if by a covenant on the land is paid to build the estate, the affirmance is not paid.

as 16.6
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97. 150.1
98. 150.1
99. 150.1
100. 150.1

however, unless renued. These are called Co. 2. 552
collateral and coven. (i.e. covenants which do not run
not run with the land. The thing is not parcel
of the demise.

E.g. a covenant runs with the land, let over
to the support of the thing demised. See: the 5 Co. 1714
and 12 Co. 1246.
and 12 Co. 1246. tenant not demised. See
sequents. To run for years: or by a covenant to
have so many acres yearly without ploughing Co. 1. 125.
Then run with the land as they go to the support 3 Co. 253.
of the thing demised. For other see those on this subject 3 Co. 213.
2 Co. 215.
2 Co. 220.
2 Co. 221.
2 Co. 222.

And as a covenant which runs with the land
(of the nature of the last case) one obtains a reversion 2 Co. 580.
the affirmance of part of the land. (Ex. as far as re-
pairing) See. Is this rule universal? Support
a cave. for years: part.

When the affirmance are renued, they are ob-
liged to perform all the above covenants, whether
they run with the land or not. And Case 1 to bind
a wall de usage on the land &c. But the coven-
ant in this case must be to do a thing which
relates to the demise: For,

The affirmance though renued, are not bound
by a covenant to do an act which does not run 2 Co. 584.
even the demise: as to build a house, or other 5 Co. 102.
land, as to give a collateral sum, i.e. which is not 1 Co. 554.
parcel of the rent. Here the act is to be done 2 Co. 580.
2 Co. 581.
2 Co. 582.

If the apportion is created of part of the premises, the rest may be apportioned at law —
the contract with him being real: proviso of estate is the province of his liability.

So, in Debt against the lessee himself: but not ^{pld.} against in Covenant.

Whether Ch^y will under any circumstances, ^{200?} ^{1 Doublt. 207.} ^{2 H. 219.} ^{340.} restrain the apportion from apportioning to a lessee ^{2 H. 219.} ^{340.} who ^{is insolvent} had never been occurred. They will not restrain if the apportion offer to re-render to the lessee & he will not accept.

A covenant by the lessee not to apportion, is not binding, though it was formally scouted.
Such covenant is not broken by the lessee's land itself taking the term in execution, nor by an underlease of part of the term: nor by reversion of the term.

The lessee is always liable to the lessor, on the express covenant, even after apportionment by the lessee.

But if the lessee has accepted the apportionment for his tenant, as by receiving rent of him, he cannot afterwards maintain Debt for rent against lessee in any case, the proviso of estate being gone.

But if the covenant is only implied by law, the lessee shall not have an action, even an action of covenant.

discrepancy for rent on the ground of enjoyment? ²¹
There is no specific contract: for the mortgagee ^{1st ed. 72.}
takes only an interest in the land, & is not a purchaser
of the term.

There is a difference between an Apprentice, & an
underlease. The former is a sale of the house, ^{2d ed. 400}
interest: the latter is the creation of a tenement
under him. The apprentice is tenant to the original
lessor: the under-lessee is tenant to the lessee.

Apprentices, & the whole term, are liable on ^{Nov. 1777}
the covenants, according to the preceding doctrine. ^{12th}
But, whether the apprentice is a sale, or an under-lease,
sale under execution &c.

Is an apprentice of part of the premises, or an ^{12th}
able lessee, or any part of it. How can it be ap- ^{2d ed. 400}
portioned? That the lessee remains liable for the whole, &c. &c.

If lessee covenants for himself & his assigns as long as
they shall be in possession, & the apprentice continues in ^{2d ed. 400}
possession after the term, he is liable on the covenant, tho'
not strictly an apprentice.

As to heirs, executors, &c. of the Covenantor & Committee
See actions on covenants running with the land, 4th ed. 77.
where the lessee's assign, if any, is not made
in law.

If a covenant with B. his heirs & assigns, for
quiet enjoyment, even in a real case, &c. in the case

2 Dec 26. In a testamentary & the document = testamentary in the
 & testamentary = his exec "that a not document, shall have
 18th. 176. the action: For damages are to be recovered & they
 2. 29th. occurred in his lifetime & so belonged to his personal
 18th. 176. estate. — And the grantee, being executed could have
 18th. 176. the right of the bank.

18th. 176. In a contract debt is between after execution & death,
 18th. 176. he has must have the action. The right violated, is
 18th. 176. his.

It is a general rule, that the documentary exec,
 must be not documentary, is always liable for a breach, in
documentary life — even in contract real: For the right
 to damages, occurred in his lifetime & would have
remained in his estate.

18th. 176. It will be also, against the exec, "though a not
 18th. 176. between, till after the testator's death (and) the
 18th. 176. not documentary of the exec, & is expressed for express,
 18th. 176. the action is founded on proving a contract.

18th. 176. In documentary & in contract a not documentary that
 18th. 176. when the document was between ten years after the
testator's death & after the settling of the estate the action
 would not lie against the exec. In for the exec in
 settling the estate should have taken honesty from the
heir heir heir?)

18th. 176. There is an exception to the rule, rules re-
 18th. 176. sponding the exec habitable, & the exec terminates
 with the life of the testator, as where it is fiduciary.

But on a reversion in land, for a lease or grant, not a lease, broken till after the reversion's death, the executor is not liable. For the liability is founded on privity of estate & the reversion is in the heir. 100. 27. a.
100. 27. a.
100. 27. a.

If executors come into possession of a lease, in their representative capacity, they cannot be sued as executors for debt incurred during their own possession. They are approvers by operation of law. 100. 27. a.
100. 27. a.
100. 27. a.

The heir of the tenant is liable for debt incurred as tenant either before or after the tenant's death, as to the debt. Liability, if it has not yet expired. But not otherwise. 100. 27. a.
100. 27. a.
100. 27. a.

In land, the reversion must be free, & unincumbered & as to the executor of debt. The heir, as such, is not, in general liable. But it has been held, that the heir is liable, having applied the reversion to himself & as to the executor of debt. 100. 27. a.
100. 27. a.
100. 27. a.

Covenants or Bonds to save harmless.

Covenant to save harmless, is not broken by the tenant to another, as in land, for joint covenant. But if the approvers so covenant with the tenant & the tenant's words are illegally restrained, the tenant is not broken. But if it is partially broken, as to the tenant is not broken. But if it is partially broken, as to the tenant is not broken. 100. 27. a.
100. 27. a.
100. 27. a.

If a tenant takes a lease, or covenant to save him harmless against the escape of any tenant, & the tenant escapes, he is not broken. 100. 27. a.
100. 27. a.
100. 27. a.

If the surety takes no bond of indemnity & pays
 the debt of the principal, he may maintain ^{Comp. 525-7} ~~an action~~
 in tort for money paid &c. (Sovereignly he
 cannot not) It has been so decided in Case. ^{129.}
 But in this case, even liability does not give rise ^{Comp. 525-7} ~~to an~~
 action. ^{129. 184.}
^{3 B.R. 14.}
^{20 B.R. 180-1}

Second, if he has taken a bond of indemnity. ^{2. 1100.}
 The same remedy exists between co-sureties for ^{2 B.R. 268} ~~the~~
 contribution, where one has paid the whole, or ^{2. 1100.} ~~more~~
 than his proportion. So if the sureties are bound ^{1. 1100.} ~~for~~
 for separate contracts. ^{2. 1100.}

Let down, if a free surety becomes the bearer of a bond
 of his own & happens & after the time for exhibition ^{1. 1100.} ~~the~~
 claim has expired, the execⁿ is still liable. The ^{2. 1100.} ~~the~~
 Act enables the execⁿ to provide for such cases, by
 taking bonds of those to whom he distributes. If
 he has taken no bonds, he would not probably
 receive relief.

There is a distinction between cases where no
 claim exists & the case where he has no power there-
to one within the time limited - & those in which
 he can in his own set account & obtain within the
 time. ^{1. 1100.} Where the contract allowed the co-sureties
 to make a severance at any time covering his ^{1. 1100.} ~~the~~
self - the demand being proceed to the right
of - & he delayed the severance till the time
 limited had expired - Adon ^{1. 1100.} ~~the~~
 This was contrary to the terms of contract.

Covenant's, since over (over) after assignment

In case of assignment of the property, the assignor may
 release, with or without release with assignment & in other
 words. The rule is that

1. The assignor

— If the assignor is not
 immediately released, it is not a release
 of the property. It is not.

4 Nov 279

2 Jan 286

2 Jan 302

2 Jan 312

1 Nov 345

To the assignor after assignment of the reversion
 release to lease, all cover, &c. But the assignor of
 the reversion never releases for all releases after
 assignment, for the covenant runs with the land, &
 is affirmable, since the Stat. Hen. 8. is consistent
 with it, and so it is a release.

4 Nov 378

2 Jan 302

4 Nov 302

2 Feb 4

5 Nov 275

But when a lease has been assigned by the
 lessee, it is not the assignor of a lease for business
 as when the assignor is a release given before
 the lease is made. But it is not the assignor of a lease
 for business as when the assignor is a release given
 after the lease is made. The rule is that the assignor
 of a lease for business is the assignor of a lease for
 business, since the Stat. Hen. 8. is consistent with it.

Note. The assignor of a lease for business is the assignor of a lease for business, since the Stat. Hen. 8. is consistent with it.

4 Nov 302

2 Jan 302

2 Jan 312

2 Jan 312

2 Jan 312

2 Jan 312

2 Jan 312

But the assignor of a lease for business is the assignor of a lease for business, since the Stat. Hen. 8. is consistent with it.

Pleadings in Covenant-breakers.

97

The declaration in Coover & Shurt is held that the
Deed & will are void. But Case will lie on an
instrument not void.
 24. 270
 25. 271
 26. 272
 27. 273

"Best case" Shurt and will the Principle & 244. 245.
seems to be in the best case.
 24. 266.

Formerly the lib must always make project.
though the lib was not in the right place.
now. It may now decide on a project, or the
will "as far by time - void out" without project.
 24. 270
 25. 271
 26. 272
 27. 273
 28. 274
 29. 275
 30. 276

When the instrument is general, a general case
decide & break is right. For ex on a con
not to decide on it contains articles within two
years - one year & that the right have lost to it.
to the lib decide without at direct order.
is good. So, on a con & that the project is well
decide - alleged that he was ask well decide
in the lib & order.
 24. 270
 25. 271
 26. 272
 27. 273
 28. 274
 29. 275
 30. 276

The most severe abuse is in the word lib & 277
of the con. So, on con & that lib is not lib & 277
in the lib, instrument that lib was not seized
in the lib & lib.

The break should be so applied, as to ap lib & 277
is ready to be within the instrument lib, on lib & 277
in the lib, instrument that lib was not seized
in the lib & lib.
 24. 270
 25. 271
 26. 272
 27. 273
 28. 274
 29. 275
 30. 276

that he put to the cause of 1802 & not 1803.

If an assignee under the 1802 law is in the breach of his duty, he must be compelled to pay to the subsequent creditor. Ex: "If I have 1000. not in the land in a landlord's mortgage, but has committed waste."

It has been a proving in the case, deceased in the case and in a certain event, the 1802 will not and is not a result it. 1802 pleads it. Ex: Deceased to receive proceeds with provision that if the debt was incurred on the land, the debt should be void.

Ex: 1802. Seems if an exception in the scope of the provision.

If the 1802 will not be void - appears in case but breach under a statute, it shall be void after occurrence. Ex: Deceased is void after occurrence. Ex: Deceased is void after occurrence. Ex: Deceased is void after occurrence. Ex: Deceased is void after occurrence.

If the Deceased is in the alternative for one of two things the breach must be applied to both. Ex: on a case, in the 1802 not to be void without the statute or provision. Ex: "Deceased" one provision that he will not without 1802 will not is not sufficient. Ex: "Deceased" one provision that he will not without 1802 will not is not sufficient.

Sept. 26. To all the present act. is to be performed
at 10. To a third person perform^{ed} must be received.
Sept. 27. However it is said after sunset.

But where there are mutual - ⁱⁿ consideration
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Pleadings of the Left

In Comm^o in action of process, the next after
 heard. But he has not broken his cover. This
 will of course is not good for it. There is
 a pair of hands to the head of some of these not
 from a secret of him. The same has been executed
 many times.

But would such plea be good, if the declaration
conclusively or so the act has broken his power?
2 P. 187.
221.
2 Mo. 311.

To avoid these forms it is given a direct issue.

Q. Is the answer of a plea & see 2 P. 187.
1812.

It is laid down as a rule that when the Court
enacts a rule affirmative, pleading hereto generally
is suffice? 2 P. 187.
1812.
2 Mo. 311.
221.
2 Mo. 311.

This general rule must relate to cases in which
the things concerned to be done are in some measure
indeterminate in kind or number as multibarious:
as a covenant in a deed "to retain all writs" &c or cure
to dispossess the latter of his office. Here a plea in the words of
the covenant "that he retained all writs" & was
sufficient. This is to answer generally on the act
But even here a plea that "he had retained
all his covenants" would not be good, for this
is matter of law - but he is empowered "that he
had retained all writs &c." This rather an ex-
ception than a general rule, which is generally.

The general rule is that when the
deft has covenanted generally to do a series
of specific acts, he must show specifically
each act. Thus if a covenant to pay
all expenses, he can show one
but must state all the species of expenses
to each one, that is show that he has shown

to comply to the act the more & when he was
so, he must not think that he can never do it. He
is wholehearted in his opinion that there will
all of course be no more of it.

But it is a general rule that a piece of
negotiation other than those in the process
of the convention will be general agreement.
I doubt whether this rule is universal for it
may sometimes be necessary to place in the open
of the convention.

The same general mode of provision
to avoid provisions is a rule in negotiations,
a provision occasions of conclusion in a show
of words where the agreement of words occasions pro-
visions words and to over the words.

Where some of the covenants are negative,
the act cannot find performance agreements,
but it must pledge agreements that it has not
done the act covenants against discovery
is taken of pledge of performance in special con-
ventions. Following General, in this case

it aided on general agreements.

If the negative covenants are void the style
is read as though they did not exist. In the
event by a Rep though not to express provision
of words.

When the covenants are in the disjunctive, the style

8. 1. 49.

5. 1. 11.

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must show what he has performed. Otherwise
his plea is ill on general & stamen on

— that it is ill on social circumstances and

Where the covenants are to do some act,
which consists of "matter of law," as to convey,
discharge &c., the aff must show performance
especially quo modo (i.e. by what manner
of conveyance &c. — that it may appear to the
Court.

So, if the covenants are to do an act which
must appear of convey, as to conveyance &c.
the rule is the same; for the performance must
appear by the record, of which the CT must judge.

In Covenant or bond of indemnity, the
aff may sometimes plead he was not perform-
ance non committitur (usually); — in other, he
must plead that he had discharged, or freed
the aff and etis quo modo, i.e. how the har-
tisation act, by which he.

It is a rule that if the Coven or bond
is to discharge or acquit from any action
the thing is contained in the instrument. & aff must
show a non committitur is not good

He should plead that he has discharged or freed
— how &c. i.e. by what acts.

Secus if the
covenant is "to indemnify" — i.e. in indemnity — then
non committitur is a good plea.

That I perceive of the Socy. and is to be changed
in words in general terms for some thing can

There is no reason for the concern it is to do as we

2. 100 200 300

But the comment as above is generalized
applied to us and we repeat being not so.

united at all Carl Harnapp, chairman & trust.

B.R. 99. n Postum clauso de Sax accensu. Quomodo bene

17. 2. 6. 14. The next day the

Mar. 2. 96. The weather is very warm and the sun is shining brightly.

mode. For this expressive allocation express an

Reading gener^{ly} "same harm less" is ill.

If the Coast is for sale, it is to be done, even if

Q. Vol. h.
179.

1. The procession is directed.

There is an ex. sign. I suppose in case of a

multiplicity of act but not motive.

2. J. R. 282. If there are two or more joint co-^ors, they must be
all must join in an action. Otherwise the deft
would be charged double &c. This rule is common.
2. J. R. 1146.
3. J. R. 186. is all contradicted. If all do not join, the deft on
some must demur.

[Nov. 445.
[Jan. 477. See this case of one is dead, his exec^s cannot
be b. 727. See versus the others.

In some cases where one covenants with two or
more, jointly & severally (i.e. to them & either, or each
of them) one of the co-^orts may sue alone, in
other all must join.

The Rule is, that if the interest of the co-
covenantors appeared to be several, each may sue
2. J. R. 282.
[Nov. 477. separately. If. Nemo to A. of Blackacre, to the
2. J. R. 1146.
3. J. R. 186. of Whiteacre & to for covenants with both & each
2. J. R. 1146.
3. J. R. 186. as to all. So, one house or room^s for 100^l. "to be
equally divided between A. & B. A & B are to
sue separately: And each may sue on the
house &c. so much to himself, without joining
the other & so se (according to the 1st & 2^d & 3^d).

But if Blackacre was conveyed to two & the
2. J. R. 1146.
3. J. R. 186. jointly with each se, the interest of the houses
1. J. R. 1146.
2. J. R. 186. joint or both must join in an action on the cov-
enant.

So that the co-^ors or co-^ors must join them-
selves separately for the same cause; yet co-^ors se
cannot have several writs of action for the same cause.

By the Cove. It is in the generally, east end of the Pt. 583.
more alone, for the rest of the other Point
 the one more has not been neglected. It alone, 8 Bo. 48.
 against one is no bar as to the other. To take it, 6. 50. 50.
 the happ one in execution is no bar. West - 5 Bo. 80.
 actual int igation in one is a bar. 6. 102.
 124.

See the last card No. where one is noted above; the other
it occurs under either second or third cover, & in the
A several, on 2nd or 3rd cover, & in last only without accom-
panying the other "Pencil".

Group of five and abundant cells. As ex cell and cell. Bar 400
 Hable at Bar to the chapel — Scenes, if you do several.
 Thomas

I have been ⁶ with " several " in position - from 1890.
 to " 1895-6
 1896-7
 1897-8
 1898-9
 1899-0
 1900-1
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 1903-4
 1904-5
 1905-6
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If several are bound jointly & severally a one c. § 800 647.
 involve exc^l in the absence, the obligation is several c. 800 648.
and at law. And so it is in Chancery as to the obligor's Share 200
 of representatives. Just not as to creditors or legatees c. 800 649.
 for it is only in nature of a legacy (to the amount of the debt) to the obligor's representative c. 800 650.
 to the obligor's representative; & a legatee is not bound to creditors.

[illegible]

24. 1890.
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Action of Debt.

116

The first question of the word "debt" is a sum certain due or payable in a fixed amount; so as a bond for a sum certain due, interest accruing to. In pr. 1806 1807 1808 1809 1810 1811 1812 1813 1814 1815 1816 1817 1818 1819 1820 1821 1822 1823 1824 1825 1826 1827 1828 1829 1830 1831 1832 1833 1834 1835 1836 1837 1838 1839 1840 1841 1842 1843 1844 1845 1846 1847 1848 1849 1850 1851 1852 1853 1854 1855 1856 1857 1858 1859 1860 1861 1862 1863 1864 1865 1866 1867 1868 1869 1870 1871 1872 1873 1874 1875 1876 1877 1878 1879 1880 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 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3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 302

500th. 89.
 J. B. C. 421.
 15. R. 637
 Paper in Riley.
 I doubt on justifying
 the next bar.

that what our judgment is entitled to demand the right
for not knowing that the gift was made to put to
the expense of leaving to execution & to Campbell pay-
ment with out execution. It seems, therefore, that the
action will lie before a jury & as you

[illegible]

So are the other hand where execution cannot
be taken out, which are laid out in the same manner
as before when he was in the same place, and
in the same manner of judgment. If any have not an interest
within 5 years - if the debt is not paid, it will
be before another notice. Otherwise it must be before the
court etc.

So if jaguar was recorded in another state, where satisfaction cannot be obtained of the Dept. has received into this state.

2 B. 78/410.
2. Nov. 292.
3. Nov. 492.
This 52

he who claims the benefit of it, applies to some & surrenders.
or it is then voluntarily submitted to the jurisdiction
of the S. S. Court, when it is decided in his favor.

is held in such a manner? "null & inane" is a
void plea: yet declaring on the record, & a record
may be made, not to state the decision, but "without fault" or
"without fault" is an implied plea.

2. Nov. 174.5
3. Nov. 195.
3. Nov. 410.
The law of foreign countries are generally, as matters of
fact, in such cases, like Deceit.

2. Nov. 126
Before the present constitution, our courts & officers held
in power & were in the habit of holding that
our courts were to be given, but they required that the right
of jurisdiction should appear in the declaration.

2. Nov. 111
They treated such judgments as to be void, that justice
independently at law & fact. Showing the original cause of ac-
tion was not necessary in principle. The judgment alone
implied a right of consideration, and a right.

2. Nov. 456
2. Nov. 406.
Said. Assumps? is consistent with debt, on foreign
judgment. Satisfaction is attached on such judgment, as well
as on judgment, & is decided here.

2. Nov. 1070
It is said, 2. Nov. 6. that when in debt, a judgment
lies, debt will also lie. This is not true in all cases.
E.g. Money paid by mistake — obtained by fraud — by
breach of trust — by sale of property converted by a per-
son not the owner.

The rule is to be understood in general. Some cases of
express promise to pay money, & of those implied from

Sept. 697. not also not say C. & D. have power? a breach
— clear and take — granted was intended.

If a house is given considered for the performance of
a contractual act, there is sometimes a condition of the
which form involve the proper title it being incurred as an
incurrence of an obligation to do the act. But the con-
sequence is the action of debt for the penalty.

Sept. 697.
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In debt on bond, damages may be given exceed-
ing the penalty in certain cases, e.g. if principal
interest exceeds the penalty.

One covenant to pay a sum

Oct. 1897. certain, debt lies. (at suite "Covenant broken.")

Sept. 697. If the condition of a bond is that the obligor remain
2. 1. 1. 1. 1. a quiet and innocent possessor of land received in payment
of the sum received in a breach.

3. 1. 1. 1. 1. If there is a covenant with a penalty, the obligor has
4. 1. 1. 1. 1. action to rescind the covenant, or rescind broken as in debt
for the penalty, unless appears that the covenant was intended
to secure the act or for the penalty. See note

5. 1. 1. 1. 1. as to the act. If the act is not performed, the covenant is
6. 1. 1. 1. 1. void as an obligation of the act, the covenant is
7. 1. 1. 1. 1. for the penalty only.

8. 1. 1. 1. 1. Debt lies in quasi contract for money
9. 1. 1. 1. 1. for a loan in quasi contract or indebit to pay it
10. 1. 1. 1. 1. due. For deposits it involves a contract in law. If
11. 1. 1. 1. 1. the act, the obligor is not liable in quasi contract or thereas
12. 1. 1. 1. 1. for the act.

Debt in the usual obligation for money is void

But if the staff should return with a letter to
him & intimate him in the above set a man right? That is
to say he don't - should say that to tell him; it would
show that we'd be against him. But his name is
such that the right or set to be executed. B. H. 11

Our habits hunting ridges against ships, for
neglect or defiance to this way, extends not to actions
to recover from them what they have occasioned or even
done. This is not a neglect or defiance within the Fed.
"A. 2. 1."

Action of Detinue.

Detinue lies for the recovery of a specific personal chattel. It is in the nature of a bill in Chancery. *3 T. R. 152.* It is for a restoration of the thing detained, with declaration that if it cannot be found, the plaintiff pay the value with damages of detention. *2 Bar. 45.*

It lies to recover any thing which can be identified—*Rob. 656.* not for money, coin or unloose in a bag. For the thief would not know where to take them. *12 M. 24.*

It lies for a piece of gold of such a value, as 20^s in money—but not for 20^s in money. *12 M. 24.*

It lies in those cases only, in which the plaintiff obtains possession lawfully, as by delivery or pawning. *2 Bar. 45.*

The action seems founded on contract. *1 Rob. 697.* It may be joined in one declaration. The personal nature of the action is the same as replevin. *3 Bar. 45.*

It does not lie to recover money, but for that is not to be specifically restored. *1 Rob. 697.*

It does lie in all cases where replevin will. but the rule does not hold converso. For trover lies where the taking was tortious.

The reason why Detinue does not lie when the taking is tortious seems to be that originally, a tortious taking was considered as divesting the owner of his property. And in Detinue the plaintiff must have the property of the thing detained. A better reason is that it is founded on contract expressed or implied. *2 Bar. 45.*

The nation of Palestine has never been in war with this
country & we say, it is ridiculous, the reason of the
war of 1848-49, the complaints registered in the semi-off.
French. France has taken place at it under the equity, Genl. 178.
at the 1848 Revolution. 2.

Action of Account.

There is no satisfaction given either by experience or by philosophy except
for the first one who has received property of another & so
 account for will remain be account for it. Right does
 not receive it this action lies.

Spies at Com. Bay, only against Guineas in Wash. 47.
 Box - British receipts, & (the Louis arrives for Jan 19. 48.
 & other 'between great movements. Com. sec'd

The 1st. 4. since the action is entered in favor of 17th. 17th
and since the rest of the court is composed of 17th. 17th
and 17th. 17th. Before this that the action be not in this case.

[illegible]

There was an exceptⁿ to this rule in favor of the exec^{ns}.
 30. 19. 6. A joint march, but not a separate there. For the exⁿ
 9. Feb. 40. 9. being a stranger, was not the responsible party and a
 20. 20. 9. proper & sound of separate & separate. This was by the law
merch^t. The State Westm^r 2. 10. 13. 12. 1) 20. 20. 24. 12. 2

extended the action separately to exec^{ns} in the cases of
 1800. 17. guaranties, baileys, receivers, in the same manner as the
 13. 2. 8. 6. law would have done, in favor of merch^t. These actions
 extended it also to the executors of the exec^{ns} to admit.

The Stat^e of Conn^y extends the action against the
 1800. 17. exec^{ns} of guaranties, baileys, receivers, & the separate
 20. 20. 24. the exec^{ns} of guaranties, baileys, receivers, & the separate, and
 well as to the joint baileys & receivers. So that it
 was legally forced against the personal responsibility of
 of the joint parties.

In every case except that of guaranties, the Stat^e is char-
 1800. 17. tered in the instans as baileys or receivers or other parties
 20. 20. 24. baileys or the separate are in the instans as baileys or receivers or other parties
 be in the instans. The legal clauses ap^{pt} which this act is
 are not incorporated by the Stat^e which has been introduced
 within these clauses, other in incorporated. The Stat^e states the
 part of joint parties or joint merch^t, to make the act
liable as baileys, &c.

There is a distinction between baileys & receivers.

A bailey is one agent or servant who has received the
property of another to improve for the owner
separate, & who is entitled to an allowance or comp^{ns} for

but we will agree in a charge & charge must be settled See note 8
1794. 2.
10000 L.
for settled as far as he has made a for time which is
not done in the settled and in equity.

A receiver is one who has received money to the use of another to render an account for it, & who has no advantage for his trouble. Account for as receiver who is appointed to receive the rent, or profits of another for a receiver makes due on a double B.

When a receiver has no advantage & is not bound to pay for the profit. But there is an exception between bankers & the profit there has an advantage & account for profit. Therefore, a banker cannot be charged as a receiver — if he were he would lose his advantage. The action of bank for bank is bank for bank & bank for bank makes a profit & bank for bank & bank for bank.

Account will not lie not an infant, in any case, for he is not supposed to be incapable of constructing or accounting.

If he who receives property of another makes an affirmation promise to account, this action or affirmation must be maintained as affirmation. It is said in the case that the bank shall not travel into the particulars of the account, and must confine himself to the general claim sustained in the affirmation. If the bank receives in affirmation is as bank to an affirmation of bank. It is therefore presumed for the bank of 1794. 23. Bank for bank shall however, never to be bound in reason; for it would be inconvenient in affirmation to bank to account.

We have a Plaidet extending the action to past tenants the Dei Bonum & Capascentes, in favor of a parson their At. 2. 28. exco^m & representatives. Also, in favor of exco^m who are ex-
cessary & sales against their exco^m & against
most in favor of all excessary & sales; for, the sum
is via the re entitled, not being proceeds ascertain, it is
accept, that the ex^m should account. Our Stat. does
not in terms, extend the action against the action of ex^m
the representatives of baillif, & we review at San. Cam. But
we cannot have a scotted the San^a Atties sub rents.

This action being founded on procedural priority, will not serve the
in for tests. We find there is an exceptⁿ to this rule, in fa-
vor of the royal procurator.

San. Dec. 15. 1750.
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An important matter that a wrong done entering in
his name as quasi owner I have account.

It is incorrectly said, that account will not lie
for a sum certain. Our account is not to be disputed
as baillif, for a sum certain; & this is the true rule.

Your action may be to be tried with the right party and
for the 100 for their may have been properly made then the off
may have been action. If a sherry collected a particular
of 200. Our law maintain 200 of this as action. That
in view, where money is received to 200, this action will lie,
If receive money to be restored to it is a certain sum
the action may be maintained; as if you to another money
to give a 100 to be done it from your own money.

San. Dec. 15. 1750.
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Our law maintain 200 of this as action. That
in view, where money is received to 200, this action will lie,
If receive money to be restored to it is a certain sum
the action may be maintained; as if you to another money
to give a 100 to be done it from your own money.

power to sign on

By the sup^d request to attend or to procure his att^d the
to R. 206 audited account report, for the first year whole account on the
3rd Dec. 17
the sup^d att^d well advised it.

By our part if the balance is found for sup^d or that he
Dec. 6. allocated him with his costs. For a bill in op^{ts} this is none
Dec. 10. in fact. The audited account and not as a place afforded
by themselves.

As to what shall be pleaded in bar of Account, the books see
in some see see in other.

It is a good rule that it is not to be pleaded in bar of an account
Dec. 10. in bar of the action any thing which shows that it is not an account
Dec. 11. to 200 l as that it is not an account and not an action in fact
Dec. 12. when said by those names. This is the good rule. So
Dec. 13. a release of all actions is a good bar. The sup^d may also
Dec. 14. plead in bar an award of arbitrators that he and his co-
Dec. 15. plaintiffs are acquitted of all actions.

It has also been submitted that a plea that "sup^d and
Dec. 16. the money to obtain of he declined it is a stranger" is not good
Dec. 17. was not liable to account is not good.

A plea in bar should be such as prevents the sup^d
Dec. 18. from being compelled to 200 l any place therefore where any
Dec. 19. not show that he is not liable to account is not good.

A plea of power on this form of bill is no bar, for it ad-
Dec. 20. mits that sup^d was once liable in some not now an ex dis tin guish ed
Dec. 21. account. But a plea that "sup^d is not liable to account" is good
Dec. 22. for if true he has fulfilled his contract the object of the action

the parties that stand up for the offer, then see them
 whether it is a ———— good or bad one. The
 C. & members to show their good or bad nature at 25
 days I can't hear the same thing again in the
 late. The parties must resort to the law for redress.

If either party is unsatisfied with the decision of the
 auditors, he may appeal to the St. in case of appeal. But for what
 reason appeal is not settled.

If however the auditors exceed their powers, or make
 mistakes, or their own principles as in computation, or
are in the law or justice in the law, or are guilty of any misbe-
haviour, their conduct may be set aside, on a written
remonstrance being presented to the Court. The Court,
 however will not usually go into a minute examination
of facts, but for mistakes appearing on face, or from
enquiry of the auditors themselves, they will correct.

Book 261
 418.
 2 May 116.

Here 352
 Book 176
 2 May 116.

Wm. D.

Notice & Request.

1. *See* 2.
2. *See* 207.
3. *See* 740.
4. *See* 740.
5. *See* 740.
6. *See* 740.
7. *See* 740.
8. *See* 740.

It seems to be a request by plff. in action on contract is always necessary - but in many cases it is not so in contract.

1. *See* 206.
2. *See* 186.

Plff must always give notice to deft when the action lies on contract - not notice as when it is expressly made necessary by the terms of the contract.

1. *See* 51.

Where the fact or event, on which the demand arises is a breach of the contract / completed by the defendant's act. E.g. on a promise to pay, at such a date as any other person should pay bill for the same. Does it follow that a party who is not the person should pay bill for the same. Does it follow that a party who is not the person should pay bill for the same. Does it follow that a party who is not the person should pay bill for the same.

1. *See* 488.
2. *See* 488.
3. *See* 488.

So on a promise to pay on the day of promisor's billage.

1. *See* 488.
2. *See* 488.
3. *See* 488.

So on a promise to pay on the promisor's marriage a certain person as S.B. The promisor must take notice at his peril.

1. *See* 488.
2. *See* 488.
3. *See* 488.

So on a promise to deliver so much corn, if it appears that the plaintiff must take notice that he gave notice to deft that he appeared of it.

1. *See* 488.
2. *See* 488.
3. *See* 488.

So, on contract to account before witnesses, when obligor shall appear. It must take notice that he did appear to deft.

1. *See* 488.
2. *See* 488.
3. *See* 488.

So on a promise to pay on performance of a certain act by promisor. It is on his return to L. or on his delivery such an article to C. or

1. *See* 488.
2. *See* 488.
3. *See* 488.

So, it must appear that notice was given in time; e.g. on promise to pay before the end of such a fair, as much as plff disturbs the deft should give notice before the end of the fair. Therefore, it is late.

1. *See* 488.
2. *See* 488.
3. *See* 488.

But if deft contract to pay on performance of an act by a stranger, plff need not give notice. Deft must take notice at his peril for on

1. *See* 488.
2. *See* 488.
3. *See* 488.

promise to pay so when S.L. marries. So, when S.L. marries

1. *See* 488.
2. *See* 488.
3. *See* 488.

into the contract: So to pay if S.L. does not pay - So pay as much as S.L. shall direct. So how the act which shall be done in such a

1. *See* 488.
2. *See* 488.
3. *See* 488.

no notice is necessary.

So, in some cases, promisor is bound to give notice (e.g. promise
by deed to deliver so much wheat when he shall receive it. Note 115

In some cases, if I make a promise or a pledge, request for or from
me by deed to do a collateral thing is only binding if on request - Som. 115
R. 115
L. 115
on 115
So, to give a collateral promise, the deed is a stranger on request. So to give S.
on request, such seems as promisor shall expressly for him. The Som. 115
R. 115
L. 115
on 115
request here, is part of the consideration & is irrevocable.

Actual request is not necessary where the debt or debt is express, Som. 115
R. 115
L. 115
on 115
not to be independent of the contract, promise to or upon whom
the promise is to do on request, be here the request is a
of the promise of the request to promise to on request, the Som. 115
R. 115
L. 115
on 115
price of a horse, land, or bought by the promisor. The debt
is not to be independent of the promise. Hence, the request is not of the collateral
"other" requests "the subject" Secus, ut supra, of promise to pay another's debt on request.

But the rule does not hold if a collateral promise, or promise to do a collateral
act. As if the promisee supra, had contracted to deliver a load of wheat on request, Som. 115
R. 115
L. 115
on 115
request must be express. I am promised to pay stranger's debt on request
but in the last case the right of action is founded on the promise & request. Som. 115
R. 115
L. 115
on 115
there being no contract & duty. Special request must be expressed.

The rule, supra, that actual request is not necessary, where the debt
or debt is expressed to be independent of the contract, promise, the promise
to be on request must be independent of these cases, in which the express
contract does not vary the debt already existing, for the debt is not to be
may be to do a collateral thing on request, or upon a pledge of debt & stranger.

One case, that actual request is not necessary, is expressed for the promise. The Som. 115
R. 115
L. 115
on 115
debt must be expressed to be independent of the contract.

135

The action of assumpsit is now in use. It is a form of action known to the law. It is brought to recover damages for the non performance of a bargain or single contract, whether verbal or written, express or implied, for the payment of money, or for the better manner, or omission of any other act. If the contract is in a sealed instrument the remedy is of a higher nature and a different writ will lie.

As a sumplaint it has been remarked, may be either express or implied. The first is founded on a contract express of the parties. The second on an implied contract.

As express assumpsit may be either in writing or verbal, and was once used in the former, this is the province of the court only to enforce it according to the terms, or give to the injured party damages equivalent to it. The court can have no power to vary the bargain, or to give more than the exact legal satisfaction.

As an implied assumpsit - There is no consideration of fact, if the matter is raised by the law, arising from the nature of the contract. For example A promises B that he will do a certain thing, and B agrees to pay him. If A does not do it, B may sue him for the money. The court will not inquire into the facts, but will enforce the promise according to its terms. The court will not inquire into the facts, but will enforce the promise according to its terms. The court will not inquire into the facts, but will enforce the promise according to its terms.

The remedy for the first is assumpsit, for the second

It is the duty of the creditor to see that a thing
may be secured to be the property of his, and the con-
sideration.

In some cases, a sum lent on the express condition
is the only remedy, and then the creditor is bound
to pay. A contract to build a house to be built in a de-
tinite time, and paid. The remedy is only in the ex-
press of a sum lent — an express whole in dam-
ages to be found by the jury. If the house be mar-
ily completed, the damages will be small, and so will
vary, according to the nature of the defect in the com-
pletion of his contract.

If the parties to a contract, a sum, for their views,
the damages to be paid on failure, in delictual actions,
it will be for the amount of the express sum lent.

The remedies by indebitatus assumpsit and debt, and
in many instances concurrent, as where goods
are purchased ab infra without a valuation, express assumpsit
it will not be lent a quantum valere assumpsit may
be recovered by indeb. assumpsit or debt, for in in-
debitatus assumpsit "it is certain or, quod certum est redde."
to a quantum merced for service rendered.

But in many cases, indebitatus assumpsit will
be assumpsit debt will not red in the valuation in
which the debt can obtain redress. as when money
is obtained per fraudem, or deceit. debt will not lie,
for there is no quod certum est redde.

Indebtedness of a person is an universal remedy, where
 the debt is in possession of the money of the Plaintiff which
 in consequence, he cannot retain, unless some prin-
 ciple of public policy prevents its application. But there-
 fore the debt has obtained the Plaintiff's money by fraud
 or embezzlement, or by findings, or by a contract, in
 which the consideration on his part has totally failed
 and then the case is such in consequence he can-
 not retain it. It may be recovered in this action.

But there are cases, where, though the Defendant
 in consequence retains, the law refuses to leave
 it over to the Plaintiff recovering the property. The plat-
 ing of the law for example, has prohibited gaming.
 And made void all gaming securities. For if in
 gaming, A. actually wins money of B. and B. pays
 it he can never afterwards call in the assistance
 of the law to recover it back. No more could it
 have helped A. if the money had not been paid, in
 the first instance to obtain it. The law says to the
 Plaintiff, "you have violated the law. which we ad-
 minister, and we will have nothing to do with either
 of you." So if a man while drunk, is overpowered in
 a bargain, the law will not assist him to recover his
 consideration, unless he was made incapable by the
 opposite party or the influence of a third person.

11. Third Branch of the law is the duty of a person to
 pay for the services of another. There are not
 in particular, the public officer, and may recover against

again, & the other. (see next page)

borrow the other. The note is a receipt for the
 money under these terms which are made to protect me
 (say I may) from any other who have it in their power to
 deprive it from me. It is a receipt from the creditor, - the
 lender, and not from the money lender. Thus if I pay
 an exorbitant interest for money, all over the legal rate,
 may be recovered back, in the action of indebitatus quasi
soluitur. As where a sum of money was extorted by a creditor
 from the sister of a bankrupt, to induce him to give
 the bankrupt certificate, and he was allowed to recover it back
 in this action, for it is against the statute and the policy of
 the law that such advantage should be taken of the
 circumstances of a recipitatus man.

Doug. 696.
 See 2 B. & C. 28.
 16 John. 23.

But, says Reeve remarked that he could con-
 cieve of a case where though illegal interest be taken, still
 it might be not in his opinion, according to the
 spirit of the law be allowed to recover it back.
 As if I apply to the who is not in the habit of borrowing
 his money to borrow and thinking himself able in
 the prospect of some great speculation, offers such a
 premium above the legal rate, as induces him to lend.
 The money is returned and premium paid. But in
 consequence of some failure in his enterprise, he resolves
 to recover back this excess of interest and brings this
 action. Can he succeed? Now in order to maintain
 this action, he should in the first place, be a creditor com-
 petent that the debt should remain the money, and that
 there should be a particular account the given. Neither

Nothing is real in the case.

It is important, nevertheless, that we understand correctly
the law pronounced on a given subject, if the dogma be false.
But this is by no means the true ground; for in
many cases, much depends upon that where there can
have been no question as where it would be absurd to
suppose one; as when robbery is obtained by force,
embezzlement, &c.; here, no nothing can be more re-
mote from the intention of the dogma than ever to require
that the law implies an assumption, because he is not
bound by the obligations of conscience and equity.

There is one case in ^{which} his action is concurrent with Fort, as I properly be taken in cross and yet you may have the Fort and win an action for the money. The actions being separate in the same ^{instance} ^{therefore} ^{may} be once ^{and} ^{over} in the same ^{case} as to the Fort.

money he paid on a contract obtained so
from and the consideration that he is
to be recovered back in this action. It is a contract
for the purchase of new land, of a very great, and in
some cases that they were situated on rocks, and were
of no value at all. The English doctrine of Severalty
in case of this sort, is applicable to this case, in
as in their doctrine of coverture, in some cases, where
widow's dower is appointed in new lands.

It is laid down in the elementary writers that

whenever there is a contract of a higher nature, the remedy on the simple contract, ^{et} is merged in that. - This is only true, where the bond is given to cover the original consideration; as where there is a pre-judgment debt ^{resting in assumpsit} and a bond given for the amount, but never where it is given collaterally to enforce a particular agreement. In that case you may sue on the contract, notwithstanding the bond. As if bond is given to abide an award, you may have your remedy either on the bond, or on the award. If there is no debt but merely a contract to do some particular act, the simple contract is not merged in the bond given to enforce it.

It is said in the books that if a creditor has a debt secured to him by bond, and debtor makes a new promise, (in consideration of forbearance of suit) to pay it, that no action lies on this promise. The principle is, not that there is no consideration for the new assumpsit, but that it is entirely supersatory. For if the creditor had been put to any trouble, in consideration of this new agreement, he might in an action for the breach of it, recover a compensation (however trifling) in damages, besides his remedy on the bond, for the original debt.

By the Statute of Frauds and perjuries, which seems to be an extract into the Statute book of almost every

State, some promises are declared to be void, unless some note or memorandum in writing is made at the time. Among others enumerated in this statute, is a promise to pay the debt of another. B. if, & being indebted to B. C. the friend of A. in consideration of loan-
ance & suit, promises to pay the debt. This promise is void unless reduced to writing.

But the Courts have decided that some cases, ap-
parently of this description, are not within the Statute.
It may be well, therefore, to ascertain the reason of this
decision. The principle is this. So long as the right of
recovery, and the security against the debtor remain
the same, verbal promises by third persons are within
the Statute. Otherwise, they are void. Thus in the case
above, if the creditor, on the request and promise of the
debtor's friend, had given up his note, or having had
execution had chosen to obtain satisfaction from the
property, but security being charged, and the debt
on the words of the debtor being lost in the bargain, the
creditor's discovery remained the promise of the third
person is changed from a collateral, to an original un-
dertaking; and therefore is binding.

It seems to be the opinion of some, that if there is
a new consideration for the promise of the third person,
that takes it out of the Statute. This is not true. If A.
having employed an attorney to enforce the collection
of his debt against B. delays the process in consequence
of a promise from C. that the forbearance of the attorney
is "good consideration," &c. the promise is within the Statute.

47
There is one set of cases, in which credit is given to the debtor, in consequence of the recommendation of the third person, which have been claimed to be within the provisions of this Statute; and of course, it has been said, no action would lie against the person recommending. But this is not so. There is no promise to pay the debt of another; but in most cases, a mere fraud, for which the proper action may be maintained.

To keep out of money, wants shoes. A requests B. to furnish him and promises to pay for them. This is a good promise, and not within the Statute, for the credit was given to A. and C. had never any debt against B. But if A's language had been, "let B. have the goods, and if he owes me for them, I will," this is a promise to pay the debt of another and void within the Statute.

These rules will now be exemplified by cases in the books, and the principles which have been derived from them will be well illustrated.

It has been said (under) to be a general rule, "That where money has been paid which the Defendant ^{2 Buss 1012} ₁₀₁₀ is in conscience retain, this action will lie to recover it."

As if money is paid by the underwriter, on a policy for a ship, presumed to be lost, which afterwards returns, it may be recovered in this action, even if there had been a judgment of Court, under which it was paid. For though to be sure it is a general rule, that you can never ^{Barre, 120. B.} ^{Manley} try over in this way the goodness of a judgment, yet if by the recovery as in this case, the correctness of that judgment is not impeached, it will present no bar to the action. So if a man has been 7 years at sea without being heard of, except perhaps under circumstances presumptive of his loss, and after administration taken out, and debts collected under order of the proper Courts, returns, now as upon principles of policy, he can not compel a second payment from those persons whose debts have been collected under judgment obtained by the act. He must be allowed to bring in debt, as against it for money paid & received against him.

The action, then, is over against him by way of having no action - left the recovery to him, & to collect the debt and not certain money - 150.

"Money paid on a contract, for which the consideration totally fails, even if there is no fraud, may be recovered back in this action."

By stat^{ts} in Englnd an annuity, or ^{rent} said, unless the whole consideration for it is paid in money. And 1. B. 32. if a party, and afterwards gave him a sum of money in part consideration with the debt for an annuity. For so it stands for now conformity with the provisions of the Statute.

149.
The consideration having failed, the amount paid
may be recovered back in indeb. assumps. 15. R. 732.

"But the action must be brought against the per-
son by whom the money was received."

An annuity bond granted by two, becomes void in rep. 25. R. 366.
but of prantee &c, he cannot recover back any part
of the consideration money, from one who was known
only to be surety for the other, and had not in truth re-
ceived any of it. Accepti. ∴ not conclusive against the
party who issued it. So where a man promised
to make a lease at a future time, for which he received
a sum of money, but before the time came, rep. to be, Barnes 304
was evicted. The consideration having failed, this ac-
tion will lie for the money. So if it become illegal
or impossible, to perform the thing promised, and
for the performance of which paym^{nt} has been made.

The same remedy may be sought, when on a
sale the article sold, proves to be of no value; or not
to be the property of the seller, tho' for this there is a
conventional remedy on the implied warranty.

"This action lies to recover back money paid to a
person acting under a void authority."

A owes B. C forces a lawyer of attorney to receive the
money, and employs an attorney to sue. A pays the
money in Court, C takes it and runs off. Afterwards 15. R. 62.
D sues C for his debt, and recovers. It is to be sure
a hard case on the part of A. He is compelled to pay over

so it would be, in the case of B. to the 1st Exor.
 15. R. 62. granting. Then, that they stand equal equities, B. shall
 prevail, for prior in tempo, rather in jure; he has a
 prior claim. His remedy is by indebiturump against the attorn^t.

But there is a class of cases where there is no
 3. F. 31. time to be given, and where a court will not, & see
 bond payment cannot be enforced; as where for example it
 is paid to one acting under an order of a court of compe-
 Contra Feb. 27. tent jurisdiction. On the death of P. P. obtained probate
 in the Probate Court of a forced will, and collected the
 debts of the intestate. afterwards upon proving this forced
 administration was granted to A who brought his ac-
 tion to recover over again the debts which had been paid
 to P. Held that the action could not be maintained, for
 that the order of a Court of comp^{te} jurisd^{ic} was while
 in force conclusive of the right of the Executor. Aliter if

the administration was granted on the estate of a
 lunatic person, supposed to be dead but who after appeared.
 For then the application would have been, examine non-jurisdiction
 the power of granting admⁿ being confined to the es-
 tates of deceased persons. So if after admⁿ taken out and
 debts collected, and said over a will appears, Ex^{or}
 cannot recover from admⁿ the amt^y of debts collected and
 actually administered. Sembl. These decisions are grounded
 entirely on the principle of holding that probate is in the act
 of those who administer the law, right always to be en-
 forced and protected. But where a court has no jurisdiction
 its judgments are void, and many judgments may be reversed

The principle which governs the recovery of the debt
 given in all these actions on the implied contract, are
 just as broad as those which are admitted in the recovery
 of tort & battery. Courts of law will not, to be sure, rescind
 a contract except for actual duress, & that whenever
 money is obtained by extortion from person as to and as
third against conscience, they assume precisely
 the same grounds as at law. Now a man
 may be imposed upon & and in this action recover
 or damages yet the contract remains. *See* *Wheaton* *vol* 23.

When one by extortion obtains more than local interest
 for his money, - the excess may be recovered back in this
 action. To whose any undue advantage is taken
 for another situation, & to obtain money. As where a
 man to whom state was pawned as security for
 money borrowed, refused to give it up until the
 owner would give an exorbitant price above the
 actual value of his money. In action brought it was ob-
 jected that the pay was voluntary and not extorted.
It was in juris; that after a transfer of the proper sum, he
might have had power for his state time; he might.
But said the Ct he might not wish to sell his state,
 - it might have been found its plate & - and thereas
 in power would have been but a poor compensation
 for its loss, so that no maxim does not apply - & he was
 allowed to recover. A case analogous in principle is *religion*.

It was an action on a promissory note given by
 the wife to secure the husband of the 10th of the debt, in

order to obtain his signature to a certificate which had been agreed to by the other creditors (on the request of the H^{on}), for a certain composition of their debts.

Lord Mansfield said that was an admission upon the Bankrupt's side of a fraud on the other creditors, and supported the verdict to remain for the Judge.

On the same principle was allowed the recovery of the money paid by the Bankrupt's estate in the case cited above.

It has been objected in these and similar cases that the money being paid on contracts made before the bankruptcy for example the sale of insurance, &c. it is against justice to suffer a recovery. But it has been decided in all cases where the debt is made to protect one estate from another, the party against whom no penalty is created may recover back the money. It has been expressly stated, that these are not in pari materia. But where the party against whom the law is made is has paid money he can in no way recover. Letters like cases, vide

It has been an old doctrine in Eng^l that where property has been stolen, an action cannot be maintained against the thief because one may the rights of the individual are infringed in the infringement. But the mischief was that in the offence against the public a forfeiture accrued, & the felon's estate in whole he was unable to recover the damages of the individual.

Thus, even in Bank and they have continued to get
over the difficulty in one case (where the mortgage took the property of the wife man,) he declines it embro-
illement.

{ Affirmable married the Girl who unknown to her
had another wife; he received the rent from her ten-
ants, for which after discovering the fraud she brought a
writ of replevin against him, or recovered. The court said the Land 28
tenant would not be again liable, having paid it to
one who was virtually her husband. 3 mistakes of law - ante 150.

If a man steals A's horse, and sells him, it may
pass, and take him even in the possession of a bona
fide purchaser. For if you allow the purchaser to be an equal equity
with the owner, yet prior in time, prior
in law. The maxim "melius est esse possidentem" can never
apply where there is a prior claim.

140. But money which has been taken can never be
issued into the hands of a bona fide holder (the secus of money [see p. 19].
because it is a currency. The currency is the rule with
respect to bank notes, which are used for the same
reasons, tho' it is often said to be, "because money has
no earmarks, and can't be traced."

Money paid in an erroneous judgment may be re-
covered back after reversal, for a judgment reversed is no
judgment at all. But you never can show a judgment to be
erroneous in any other way than by reversal, or its reversal.
i.e. you can never go into any argument to show it is, except
on writ of error, &c.

You cannot maintain Step 1 a count the officer for taking your body in execution, or a judgment afterwards reversed. For until reversed, it was in all respects a good judgment.

But if it was a void judgment, you must treat it as such, and then the officer who served the execution would be liable; as if a justice of Peace, who by giving judgment in Prover for 40s whereas his jurisdiction is limited to 15s. His judgment is void, and the case comes non judice. And the officer is bound to know it. The plaintiff however if process taken and paid, may waive the tort and have a judgment for the money.

Lord Kenyon has shown some disgust at the doctrine laid down by Lord Mansfield in the case of Wheat and Wheat, which allowed a recovery in this action, of money paid on the judgment of a court of inferior jurisdiction, when such recovery does not impeach the correctness of that judgment. But Judge Pease believes the decision of Lord Mansfield to be law and founded on substantial reasons. The judgment of the Court in that case was perfectly correct, they could pay no notice to the contract between the parties; of course their judgment was not overruled by the decision of the higher Court.

The action of indebit. Assumpsit is brought to recover debts, generally imposed by the law, or a contract. It is also to recover tolls &c.

for a voluntary contract. For action of assumpsit will not lie." Flowers vs. D. L. To want his money, and without the request of D. pays, he never can bring this action to recover it. For it is not only a voluntary contract, but, were this action maintainable, it would infringe another principle of the common law, "that a chose in action cannot be purchased." 88 Hudson. The rule is this, that, wherever there is a chose imposed upon any one, to furnish necessaries, or do some necessary act which must be done, which he neglects, and which there is no person appointed in law to do, this action will lie in favor of him who performs it against him whose duty it was. Suppose, for example, a man of property turns his wife out of doors, now as it is not duty of the husband to take care of the wives of those who are themselves of ability to support them, it is clear that the woman must share unless his the humanity of her neighbor. She is provided with necessaries, the law therefore imposes an obligation on the husband, to repay the expenses thus incurred. So where a father in poor circumstances, turned away his child, it was held, in this state, that an action was maintainable in favor of the man who had provided it with necessaries and instruction. But suppose A feeds the children of B, a laborer, but just able to furnish food for his family, in want of many of the comforts of life, and furnished them liberally, with shoes & stockings & clothing of all sorts, he must not maintain assumpsit against B for this, for it was the duty of the town to have provided them. But

but an action on this case could be maintained against
the same officers, if the things furnished were negotiable
where they, in notice, had refused to supply. In the apoth-
ecary, who on a sudden ever so many furnished medicines
for the sick person, was allowed to recover, against the person.

1. Agents Contracts in which a special commission is granted
to the contracts founded on Salas, on which monies has been
paid can may have express or implied a Guarantee.
Suppose an execution of the thing sold. Every sale implies
a warranty of title in the vendor. You may therefore have
in the case an action on the contract or warrant to reclaim
and bring back again for the money. But where there
is no action on the contract or warrant are recovered.
2. Salas, 1078.

The said relation to sales at auction, is somewhat peculiar.
If there are limited articles at the time of sale, there will
be no action on the contract or warrant of the auctioneer, will
not be allowed to control them.

The article to be sold, does not become the bidder's
until it is actually knocked down to him, therefore
before it is knocked down to him, or before he bid, he is not
holder.

There is a distinction in the law as to the
nature of the contract for the sale of an article of more than
one value, is limited to earnest money to be paid at the
time. Sales at auction have been held not to be within the
law, for being made publicly they are not within the law.

misplaced, unless it was made so correctly.

157.
4 Dec. 2101
3 Dec. 1921
13, 78 k.
St. 506.

Suppose the article is bought by one of the bidders, and he takes it, or pays the purchase money. The auctioneer says, "he pleases, sell this article again, and if the price, he obtains, does not equal the first, bring his action for the difference." But if earnest money was paid by the bidder, the auctioneer has no right to sell, without waiting first for payment. If it is refused or not paid, he may then sell at supra, and after applying the earnest money to make up the difference, bring his Tabl. 113 action for the rest.

The question whether if the purchaser does not call for his goods and the auctioneer ^{in action} varies the contract, he can retain the earnest money had never been awarded at law. But the Court of Chancery in a case in 10 Wm. decided that where on a sale by order of the Court before the Master, a bidder offered 10,000 £ ^{12 Wm. 745} for an estate, and deposited 1000 £, he might elect to forfeit the deposit or pay the residue; that the man who makes the supra bid purchases a refusal.

A. sends goods to an auctioneer, with orders not to sell, under a fixed price. The auctioneer sells them to the highest bidder for a less price than he was directed to obtain. A. cannot maintain an action for the difference, for the auctioneer does as he ought. It is implied in sales at auction that the highest bidder shall have the article. Comp. 295.

Can the auctioneer maintain an action against the buyer, in his own name? The auctioneer has no possession and a lien; this gives him a special property, which is all that is required. ^{170. 181. 81.}
The money.

to be auctioneer, or the reverse party of the contract on the part of the vendor is not completed? In the case which has been decided on this subject, it is said that the auctioneer is liable if he doesn't give up the name of his principal. But, I never can see on account why he should not be even if he does give up the name. For the principal may be a bankrupt.

1. 11. 123 Whenever by the terms of the contract the party has liberty to return the article paid for this action lies.

To where A purchased a pair of horses with warrant, and then moved around, so means how his action on the warranty, the seller must return them. Where the contract is local Western Downs in Ind. Where a pair of horses were purchased with liberty to return we send a 2nd 3rd pair taken, without a new contract which Debt refused to accept. Debt per. indeb. warrant not lie.

It is necessary to lay a foundation for or prop^{arrang} But the contract should be made by the parties, at the time of sale. The meeting of the minds of the parties is the commencement of the bargain. It was to sell to him now, does it what do you wish? 1000 of the 1st. "I'll give it." Now if this is all, the bargain is not closed there. it is in the power of either party to "clinch" it by tendering the money on the one part, and the horse on the other.

When either makes a tender, an action accrues.

10. To know a case of Parti son in the State. It owned a ship which he wished to sell to T. T. agreed to give him \$100,000. Since he asked on a certain day, on which day was to give him deed and T. to pay the money. Told, when the day came neither party would do the first step and each brought their action and held that they would not be. But if the money had been tendered and vice versa the other party would have been liable on his contract.

Much has been said about the articles being stolen or tendered which is significant to it. There is no objection in a thousand cases. Consider that the value should take is in many cases sufficient. It is not always necessary that there should be evidence of a contract. The property is vested as soon as the money is paid.

Sometimes it is the duty of the sailor to actual move
men to deliver, and then if he does not, action lies.

There the vendee might find a particular mode of obtaining
if the vendor conform to his directions; ^{see} it is at the ^{owner's} risk
of the vendee. But if there is no mode agreed on
and the vendor undertakes to deliver, and it so happens
he must deliver it.

There is no question but that this action in Europe
may be maintained on that species of compact known
by the name of war; there no particular principle of
policy is involved. There has been a case of late years ^{ever}

when the question was decided and it was claimed by the defendant's Counsel, that the whole doctrine discovered on wagers was opposed to true policy. But the Court found the weight of precedent so great in favor of the practice, that a majority of them were unwilling to oppose it. Mr Justice Buller, however, was inclined, even at that late day, to listen to the objections. Some wagers contracts, as gaming contracts ~~are~~ are made void by Statute. And it has been decided in the English Courts that, if the wager concern the interest of the public - as if it be upon the success of an expedition against an enemy, &c. - or be an incitement to a breach of the peace; or if it have a tendency to wound the feelings of a third person; - or to introduce indecent testimony; and (note his father) that if it concern the person of another, the 'his interest is not affected, an action cannot be maintained. So if the centre becomes more. It is also necessary that the chance should be equal; i.e. that the event, which is the subject of the wager should be contingent at least with respect to the parties. A bet was made upon a decision of the House of Lords on a question carried up from the Chancery; and on the trial it was objected to the recovery, that the event was not contingent, for that the law was certain, and administered by men of learning and integrity. But it was manifestly decided, that the law was uncertain, and was kind of action.

In the State of Connecticut the question whether actions on wagers would be sustained has never yet occurred a judicial decision, but it seems to stand ^{at least} far off from most of the disputes.

Let me state here, where no more has been said, what
 has been claimed to be a claim. The Statute of Frauds &
 Perjuries, and to clash with others at the same point.
 But I do think they may be all reconciled.

In a case reported in Parrow the principles were well. Burr. 1266
 assigned. The decision was correct. The argument for the
 debt is well worth reading, and the distinctions taken
 by Sir Peter Norton, are (as far as they go) the true ones.
 The case was this; the letters of some Chambers, made
 over his property to secure his creditors, they appointed the
 debt their books to sell them. By an established custom
 in London (to facilitate to strangers the movement of money)
 the landlord has a lien for his rent on the goods of his
 tenant. When the debt therefore came to be due the boy
 or the landlord insisted on his lien right. Thus upon the
 debt's promising to pay him, he suffered the goods to be tak-
 en; and afterwards brought his action. Debt headed
 to that of Statute of Frauds & Perjuries "promise to pay the debt & another"
 It was decided however not to be within the Statute, for the
 Landlord having a lien, the goods were the debtors. The true
 principle was the man took a hold on his security, and thus
 he had remained against the debt, yet he insisted on a
 bank right, and so the ~~landlord~~ got nothing.

It is untrue, said by some, that a mere consideration
 taken in promise over of the Statute Forbearance of such a ^{small}
 amount is a good consideration, but a verbal promise
 in consequence to assume that of one's debt is not so.
 extrinsic. There are two cases in Wilson & it is settled.

See N. 8
 282-1
 contra to the
 doctrine of the
 law

2 May 94
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each other. But they are perfectly reconcilable.
The case in *1. Wilson*, was this: an action of assault on a
letter against B. & a third person, promised, that if
A. will withdraw his suit he would pay him 50[£]
It was his action on the promise and not good. The true
reason of this decision was that after a retract, no
action for the same cause could be brought at common
law. So that A. lost his remedy against the third party.

2 P. R. 80

But in the last case the remedy and right of recovery
against the first remained.

When an action is founded on a promise to pay the debt
of another or to perform any of the acts mentioned in the
Frauds and Deceits, there is no need of statute
in the declaration. But the promise was in writing.
You must show it by the writing to be true. It was so,
but you are not bound to state it. There is the advantage
therein in making the declaration in general terms
that after fact no advantage can be taken. It is in
fact, for it does not state, in the words of the
promise was his hand or written. *Page* cited a case of
his name to illustrate this point.

This action may be brought for rent on a parol de-
mise. An action to recover is founded either on a deceit
or being by parol, it would otherwise be within the
statute of 1. Geo. 4. c. 14. It has been questioned whether
an action will lie for a parol promise to pay. But certainly
after you on a parol promise is brought in equity and common
law. 1. Geo. 4. c. 14 is a parol promise to pay is within the rule.

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A more careless will not see his neighbor in
 trouble. Laborer sends his neighbor home in the
 mire, and spends this time in the neighborhood of extrac-
 tion. No action here. A man sees L. friend's agent
 accepted for a small sum. He stops, as he supposes, his en-
 gager he knows the debt he can never recover of the
 person he intends to stop. A laborer sees the reaper^{2d 10}
 at work in a large field of grain, and without request
 whistles him. He cannot recover his wages.

Where a man performs services, with no view to an
 reward in expectation of a laborer. If he serves for whom
 his services have been requested, and without fraud or
 for him, we can never charge those services to the estate & 2d 10.
 recover on a quantum meruit. But aliter for one & another^{2d 10}
 a request. There is a custom in some large cities, & 2d 10.
 which enables porter and carmen to recover on voluntarium
contractus.

"Allegation, and warrant of coercive creation," have been consid-
 ered under the title of Contract.

It has been said that when the consideration was
just a promise to pay would not be binding. But that
 is not the law now. If the thing done was a benefit
 the promisor and was said to be at his request, the law^{2d 104}
 on proof of a subsequent promise will imply a request.²⁸²
 But even, if for the benefit of another man merely.
 and though a man may not be bound at law, yet if
 there was a subsisting moral obligation, as a promise to
 pay a debt within the statute of limitations, such custom
 is sufficient.

But this rule will not hold where the previous contract was void, and not merely voidable. For a void contract can never be made good by a subsequent promise. ¹¹ Bull. v. Bull. v. ¹² if a married woman, after coverture is determined, promises to ^{perform} ~~perform~~ her former void contract, as in the case of the "apothecary" & "illegitimate child."

It is said in many of the Elementary Books that when money has been paid on a contract to be suitably used if ^{Nov. Reg. 5.} the act is not performed the money could be recovered back. It has been decided however, in a late case that to admit a recovery would be opposed to good policy. For then when the man has received his money, he will have no inducement to commit the offence.

The rule of damages

All equitable circumstances may be shown as the wife
to her husband. It is a man who found the
money & another and no advertisement or been at
any other trouble or expense - there may be interest
for as there is, as a kind of debt of the children and
they would not pay the loanation or an action.

There are some cases where one man has received the property of another which in consideration of some return, and no principle of policy prevent the recovery

yet the action cannot be maintained. I am bound
the cattle of the deceased husband. To pay a certain
sum to recover them and to make it indub. when it
to recover it back, unless a claim that ^{he} had right
of common in the leas in gross. Held that the ac-
tion was ill brought. It should have been trover or
trespass, for a right to common or right to land, shall
never be tried in the action of assumpsit. ^{Coop. 414.} Pottery can
derive no advantage from the decision, for it does
not appear on the record that the right was tried.

It has been questioned, whether any other person
could bring the action except the one to whom the
promise was made. On a promise made to B to pay
money to the use of W, could W bring his action.
The trustee may sue on the promise, but can extin-
guish it? There is no case where it has been decided
that a man except where trustee was placed under
such circumstances that it would be absurd, or very
inexpedient to vest such in him, the remedy. Where
I was living to make provision for his children, settled
he farm on his son B. with liberty to the daughter ^{1. N. 6. 38.} E. C.
to cut timber to the value of 800^l. The son disliking
the provision, promised in consideration of an absolute
settlement of the farm, to pay the 800^l for daughter's
portion, at a time certain. The father died, and the
son was made Ex^r in the will. The promise descended
therefore to him. It was as if he agreed for son, if married
to her, and in a claim in respect of daughter was maintained.

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and, these issues were discussed in a case decided
in Westminster Hall, in which the doctrine was carried
further. A master promised to the father of his appren-
lice, to give him 25 guineas with his freedom when of
20e. When the time arrived the father was dissatisfied
might have used, but was induced for a small bribe
not to bring his action. An action brought by the
young man stating his father's refusal was maintained.
A similar case was decided in the same manner in a
New York case in this State. You would not the same
reason, with the same force apply to bonds? There
has been a case in England. But it has been decided
by Judge Estlin in Circuit Ct. of U.S. in the State of
Vermont.

It is said that several promises are void. John
Pitt promises 100 £ to whomsoever shall marry his daughter.
Action would not lie. It is a common thing to be
after a reward by public advertisement. The question has
never been made but I presume an action would not
be maintained. There, but, what? I have been asked
whether a promise void if offered? He can maintain his
action at com. law. See discovery note to 2d or order
of J. I discuss over could not in reverse maintain action
well examined by Chipman (Vermont) dissertation. Principles
are generally made.

Money is paid by mistake to an agent. If he has
not paid it away, he is answerable: if he has, his
principal.

4. Nov. 1885
Case 586.

Liability of Master and His Owners and Under "by reason of"
Contracts made by servants and agents empowered
by their masters, bind usually not themselves but ^{1. Mol. 2. 571.}
their employers. If they exceed their authority they bind ^{2. 3. 341.}
themselves. A contractor for the army (during the ^{3. 4. 341.}
Revolution) in Canada, was sued on his contract.
Held that he was not liable being an agent of the crown.

The form of indebituratus is very peculiar. The
declaration states that the debt exceeds four shillings
or of the 100 one thousand pounds, and because
debtor and in consequence of such liability promised &c.

The practice is, after action brought, to give the debt
notice of what the plff intends to rely on in support
of his claim, and after giving such notice, he is no more
at liberty to depart from the grounds there taken. Thus
if he is the custom in Common Law they were contained
in the declaration. So of quasi delictum and other pec-
eral counts.

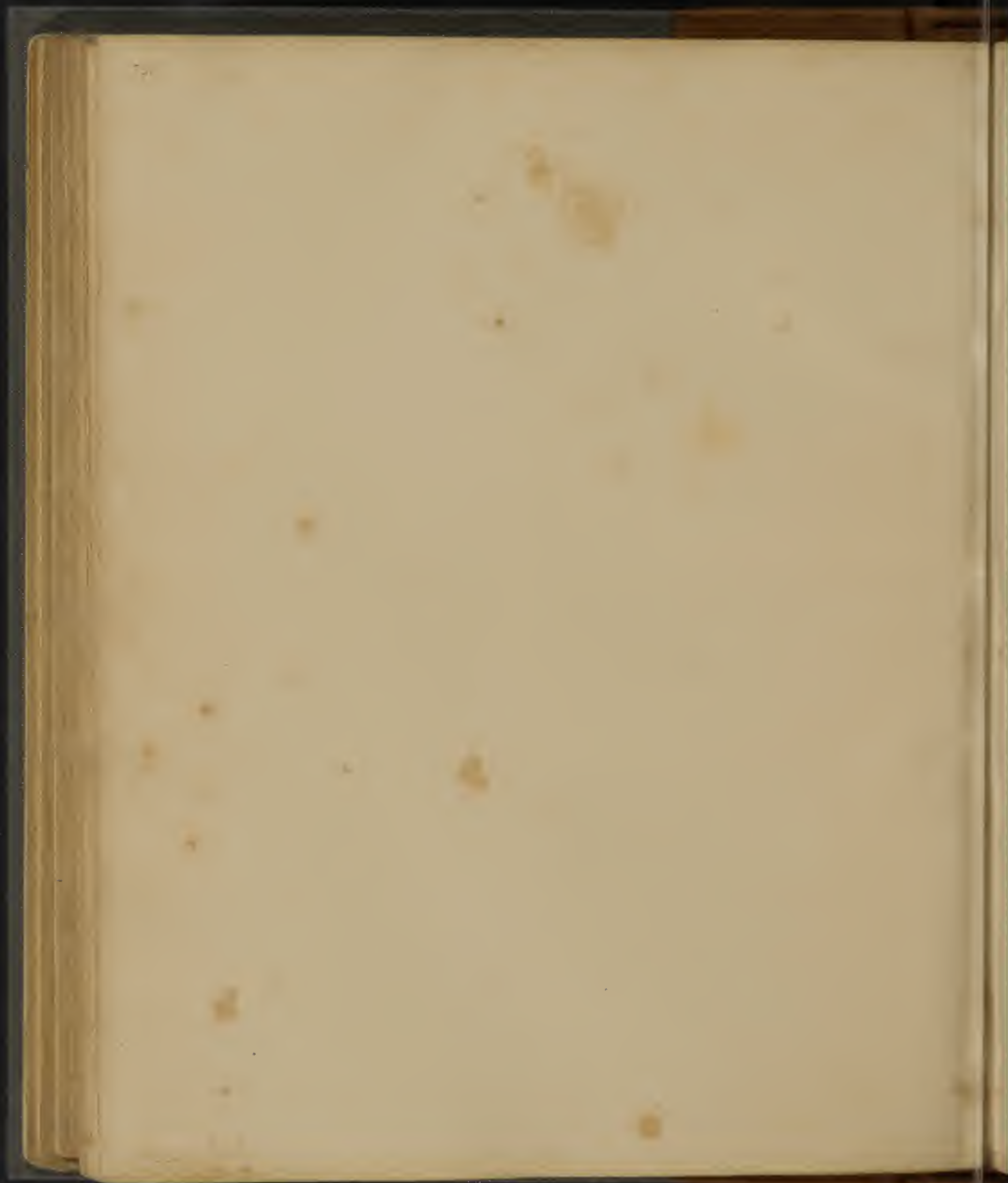
The declaration on an express contract must state
it precisely as it was, and then aver the breach.
And if your fact does not comport with it, the action
must fail. The defenses to the action will be considered
hereafter. To a quasi delictum, there are no general. Prom-
ise not made. 2^d Recovery varies by something since
happened.

Notice and Demand. There are cases in which a demand is necessary, before you can bring your action. It is difficult to find in the books, a true rule which will apply to all cases. After an examination of all the numerous Judge Recor cases, this, "If the contract is of such a nature, that the debt can be paid on it without being called on, you need not demand it;" or "if the can make a tender," the rule is the same. Judge has compared his rule with all the cases. I fear, if the contract is of such a nature, that it cannot be performed without a previous demand. A seller wants to be paid as he is to be paid in cash. Now if B comes the next day, with his money, and says, "I am ready to pay his 400 worth." That would do. It is not a tender. The nature of the contract shows that it is to be some when called for. So if a joiner agrees to build a house, materials to be found him. We must wait till called for. There was an agreement to the time. A merchant (as is customary) gave his creditor a "cash bill" "due out of my store 500," and next day hunted up a parcel of refuse articles to that amount and made a tender. Now this could not be done, the meaning of the contract was, that he should pay on such articles as were called for, and so the Court decided. ^{A tender is not made till demand is made.}

There is a difference between notice and demand. Demand implies notice, but not vice versa. An executor must have notice before action. The principle is, that you are not to be allowed to sue a man who is ignorant, that

he owes you the rule and then he says another is
 that if your means of procuring are better than
 his you must give notice: inly it is a matter of con-
 tract in which case you are excused. In that case
 he has no more he had notice. I applies to B to trans-
 act some business for him, in a distant town. He replies
 that he will do it in the course of the winter. He must
 give notice to A that he has done it, before he can sue
 for the price. But if B agrees to give B 500[£] on his
 marriage, both living in the same town, this is a
 matter of violation, of which notice will be presumed,
 and the party may sue immediately.

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Of the Defence to actions.

Every action there is a general issue which is a denial
of the facts in the declaration, and the issue of
assumpsit non assumpsit - that he did not assume
and promise &c. In this action, every thing may be seen
in evidence at common law which I think that there is
no right of recovery ex tunc in the bill as payment, &c.
is assumpsit. But I think it means precisely the same as
in assumpsit in assumpsit that debt is not liable to pay. A distinction
has been attempted, between these cases, in which the
law raises the promise, and those in which it was made
by the parties. But the law recognizes no difference. The
debt may if he please, stand in a assumpsit, the several de-
fences in law, at common law, as release &c. I will not
make the distinction the general issue to give in evidence
in any action, a bill of defence is in assumpsit &c. &c.
where it is assumpsit or a assumpsit act of the bill. Under this
statute it has been decided that release occurs in this case
in evidence, as in assumpsit assumpsit. I think that
the decision here is the same as to assumpsit &c. &c. &c.
the common law. Also that a record of a former judgment
fact
of a suit of the bill may be given in under the general
issue, for that is an act of the law and not of the party.

Several defences to contracts. You are never libera to take ad-
vantage of them, assumpsit under the law, for they may
spread them upon the record & you shall.

Doctrines of tender consider a Tender, is meant an offer to
pay, or to perform any act stipulated in the contract,
as for ex^{mp} to build a house, - or to marry &c.

A prominent feature in the law on this subject is this,
That, whenever the tender is proper and in due modo
et forma, it is just as beneficial to the party tendering
as an actual performance of the contract. A promise
to deliver to B in two months, or his selling wheat at 25¢ per bushel.
The proof of tender made bona fide at the time, & can sup-
port an action for the price, or waive himself of it in
defense on an action for non performance. So on a
contract to pay money it is sufficient if you carry
the money with you, at the proper time, for the purpose
of tendering, though the plff was not at home.

Tender is a plea in all actions where the sum in de-
mand is certain, but in no other; as where the damages
are to be fixed on a hearing by the jury. If it appears on
hearing to be on an action for damages I cannot plead tender.
So if I contract to build to a house and fail the damages
are uncertain. In certain cases, by statute in Eng^l & America
against the practice of promissory tender, in some of
the states in case of accidental non payment it is the law that
if a tender was tendered, in the opinion of the juror plff will
lose his action, but in some cases the tender must be
a valid one & the sum to be certain.

If the parties differ as to the sum really due a tender
cannot will succeed. So a tender of the value of goods,
for a good sold at a certain price, cannot be a legal tender of the

By the contract he for the lender's money, the tender
 must ^{not} have the money, on the refusal of the tenderer
 to accept it, but must keep it to have in readiness
 to him whenever called for. But if it be any collateral
 article, or a deposit of some for ^{or} the tenderer is not bound
 to take any care of it, but may leave it at the place appoint-
 ed. The only hazard if he leave it on the street, but it
 is his choice for safety, and it on him to consider for
 found the deliver if the tenderer would have his remedy
 in law for the property was vested in the tender.

A tender is a discharge of all securities given for
 performance, in a legal sense, as to the law. It is the same
 there in England in some cases for the debt after action brought,
 when there has been no tender, to bring the money into Court.
 If the plaintiff accepts the money and takes it out of Court, he releases
 his debt to the time. But if he refuses and insists that
 there is more due, if the third find that money was tendered,
 and he loses his action, there is an admission on the part of
 the debt that as much as he tendered is so many pence, even
 if the jury find that, and just will be for that sum.

It has been observed by some writers that the person who
 tender the money, is liable on refusal to keep it until it is
 paid to the tenderer. It becomes therefore a question
 of the tenderer's question to determine whether if the money be
 not in immediate possession, the obligation of the tenderer
 is to keep it, or otherwise, he tenderer is the tenderer
 that contains the obligation. Some observations in the
 same law writers have since led to the mistake which

say the fact that the debt or demand is, or is a
 demand on him. But it does not follow that he was or
 is not in possession.

Now then the loss must fall upon him who refused
 the tender. The law makes the tender on his baille, the
 keeper of his money. All the writers acknowledge that
 the man who tendered shall have the benefit of his ten-
 der. But they also go to the position that the security is
 discharged. Now they notwithstanding the tender and
 refusal of the tenderer does for his money, & will re-
 cover it. This is not however, (by their position) a recovery
 on the security, but a payment of the direct money on his
 legal call for it. Another reason for maintaining a suit
 on the security is, to take it from the possession of the
 creditor, and to prevent an action by him when pro-
 vided shall be void. 2. It is said, that although when
 the money was tendered by A. B. refused to accept, it got
 if T. or money after B. calls for his money and T. declines
 giving it to him on an action brought by B. T. cannot
 plead himself a holder of tender, until a recovery will be
 had on the note. True. But the real issue to be taken for
 is this. After A's refusal on the demand of B, he is estop-
 ped of his defence, for he can never plead having without
 payment that he was "always ready," so that he has no hope
 in the means of showing that the security was discharged.
 But this is nothing unusual, even in receiving that
 which was due: Where one states, repels another, and
 the repelling state is in of repel it, the former reverts.

It would be unreasonable to make the debtor no more
 when money is tendered, than of the article as collateral.
 Suppose *A* in *Italy*, & is indebted to *B* in *England*. *A* goes
 to *London*, to make a tender and *B* refuses to ac-
 cept it; in returning with the money, *A* is robbed, so that
 he is to sustain this loss for his assistance, trouble, & pain &
 his own a considerable expense, & would not have been
 obliged to take any care at all of it.

For tender & bill countries, where, if the person to
 whom the tender is to be made, has left the country, or
 is inaccessible, and has no agent, that the tender need
 not follow him out of the realm, or suffer any inconve-
 nience from his not being accessible. It is sufficient
 if he goes prepared to tender at the time and if
 the person is not to be found, the money must be kept
 for him, at all times in regard to his demand. Ten years
 after the Creditor returns and demands interest, he can-
 not recover it. That loss must be sustained by him.

On the principal question, to which these observations
 are applicable, it is remarkable that no modern deci-
 sions in the English Ct are to be found. And there are but
 two old cases relating to it. These are in *Davis's Rep't*

In the reign of *Edw.⁴*, certain pieces of money, were
 current in *Great Britain* by proclamation as shillings, a per-
 son, who owed a debt due during the existence of the proclama-
 tion, tendered half in these pieces as shillings: creditor refused accep-
 tance & brought his action, in the meantime the money de-
 preciated in value. Held, that *cred.* must lose it, for the money was his.

Davis, 18, 27
5. Dec. 1446
Quilpin in
Dyer 81.

The question first arose in this country, during the revolutionary war, or rather in the actions brought after its expiration by the refugees, whose debts were secured to them by the Treaty. The King & "aym^{ts} Lawing" arrived during their absence, and tender been made in "controversial money," which was then by Statute made a legal tender, it became a question of some importance upon its complete depreciation at the close of the war to determine, who should sustain the loss. On the one hand, it was claimed that the Treaty had secured their debts. It was replied on the other, that to be sure, the Treaty had secured their debts which were due, but that there were discharged by a tender, which subjected them to the loss. It would be highly inequitable to compel a man to receive his debts in a depreciating currency, and then debar him of the right of paying on the same.

The British government at first complained that in violation of the Treaty, the refugees came off with less than their dues. But the discussion touching this question gave rise seems to have satisfied their government, & the correctness of the decision, and they relinquished the claim. Congress however recommended to the States to repeal those laws which were opposed to the Treaty. Our Legislature to avoid pointing to any particular laws, passed a statute (in which they felt some pride) repealing all laws, which were contrary to the provisions of the Treaty. Still in Stat. Book. So that the point seems now to be settled that the money belongs to the tender, to whom after refusal, the creditor is barred. No.

5 Dec. 5. A tender by the one party to a demand by the other will be of no avail if the tender is not made in accordance with the law. It is not a formal tender.

(Statute articles must be left at the place of tender.)

8 Dec. 4. 5 Dec. 115. What is the proper mode of making a tender. A debtor has paid his debt to a creditor. "So I've come to pay you your money." This is not sufficient. He must hand it out to him, though there is no necessity of taking the money out of the bag or counting it, if you are sure there is enough.

10 Dec. 915. It has been made a question, whether a tender of money is good, if the debt may be recovered after tender by a judgment.

Some have said that if a man by an agreement is to deliver one of two things, he must tender both. This is only true, when the alternative is at the choice of the debtor.

5 Dec. 114, 115. No money is a legal tender, but almost everywhere, (where there is no law,) but the common currency.

So English Coppers even is allowed to be a tender, as in this country, but it is now decided in a case in North about 15 years since, that it was only a tender for the purpose of exchange. A man made a tender of a large silver in coppers, helden not to be a good tender. So English authorities there.

Counterfeit money, supposed to be good, tendered and accepted, discharges the note, but the money is never received for the

5 Dec. 115. 1 Dec. 115. 5 Dec. 115. mistake is value in good money. If the money tendered be in bills which are current and tendered, makes no objection to them, the tender is good; and the objection cannot afterwards be taken.

There being nothing but a contract for money he said
 no place as fixed, the tender must be to the person ^{at his place of abode} ~~person~~. In case
 tendered to him within the season. How far this doctrine
 applies to this country has not been decided. If the debtor
 goes into a neighbouring state, perhaps but 2 or 3 miles from
 his former dwelling, it would seem unreasonable that the
 party should be excused from tendering at his residence. If he
 goes to a distance, he should appoint an agent to receive the
 tender. There is no doubt but that if you go to Louisiana to
 make the contract, the tender must be made there, or the
 last day at in force.

There is an exception in the English rule founded on
 the situation of tenderors.

The place of tender for collateral
 articles, especially of a bulky sort, is generally fixed; if not,
 they are to be tendered at the dwelling house of the party.
 But if he removes to another town the party bound to deliver
 is, is not obliged to follow him (even if money). It is enough
 if the articles are left at his former residence. Though in
 some cases, if the creditor's residence be changed, the tender
 must be made at his new dwelling. If it be no more
 inconvenient for the debtor to deliver at there, than at ^{3 miles} ~~the~~ ² ~~the~~
old, or about the same, it is unavailing. If the
 creditor's new residence be at a distance on a different course
 from his old one, he may direct the debtor to deliver the arti-
 cles just as far on the road to the new as the distance to
 the old.

Suppose to be a charter particular in Charter Now if
the charter would have a right to make tender to the last
possessors, or may be indemnified, and yet have enough
to renew it and then the right ought to be his own.

When rights are over required, whether at common law or in Part 127
Livery, by one person, it would be strange to see that two
rights may be deputed as a tender to one person. The owner
has a right to it and all things being equal the tender must
be made to him. It has been decided in Connexion that giving
to the debtor the same rights that he would have had.
If an assignment had been made, the tender must be made
to the assignee, or if he has at a distance to his agent at the
place where he has it made to the agent, under these circum-
stances, ^{and no right being} if a charter would compel the debtor to pay it again.

Consequences of Tender and Refusal. Suppose a voluntary mortgage
is given as a security for the performance of a contract from to pay.
If tender be made, the mortgage is discharged and if
refused, the undertaking being voluntary the owner may have
no remedy at all for he has no benefit any right.

If give a mortgage security - the law does arrive and
he knows the rule. The Pr of Ch will compel the mortga-
gee to renew, for the security is discharged. But suppose the
law may have gone by, a tender does not release the property,
but it gives a power to go into Ch and obtain relief.

Tender gives the same right as payment. Therefore if the owner
of the money has promised to pay it, or a debt, on a tender
of the owner, he will be bound to make the conveyance.

Co. E. 207
210, 211.
98, 99.
2. Rule 523.

The right of the rule is in some instances carried to excess in the English law. Thus the contract is for some collateral performance. As if A. contract to build for B. a house for 5000 £. As such a case (to finding the materials) if A. tender his money with his workmen &c. and B. refuse, A. may bring his action and recover the money.

Author's note
the promise

Co. E. 758.
1. Term 129.
2 Co. Ca. 206.
2. R. W. 378.
1. Broom 71.
2. Term 352.
2. Ray 964.
2. Broom.

In Conscientia we have not adopted this rule in its full extent, our Acts have directed the jury, not to be "equitable" in their damages.

Lord Brougham has a copy of a note in Lord Brougham's handwriting in which it is said to be a general rule, that in all cases in which a right is acquired by tender that right is as effective as if there had been an actual performance.

Of Pleading Tender. It is not sufficient in pleading to say that the debt tendered according to law. It must be proved from the facts. He must say that he offered it on such a day, and on the uttermost part of that day, unless it is made meet with the plea, and made tender before. It is usual to add, that the plaintiff refused it, and then the debt is set out, if the tender was in money, that he has been always ready to pay, and has brought the money into Court. Secus if a collateral action, as a non est, etc. If the plaintiff is not ready to tender, the debt is set out, ready to tender.

3. Ray 687.
1. Broom 223.
2. B. 723.
1. B. 723.
1. B. 723.
1. B. 723.
1. B. 723.
1. B. 723.
1. B. 723.

If the plaintiff is not ready to tender, the debt is set out, ready to tender. If the plaintiff is not ready to tender, the debt is set out, ready to tender. If the plaintiff is not ready to tender, the debt is set out, ready to tender.

D. 23

2 V. 118.

9. 6. 74.

L'N. 254.

Talk. 324.

Part. 1. 597.

When J. G. came to see the p. a. & tender, he was sure that the safe had not always been made, as it had been made. But the tender refused to deliver it. If you saw the tender, it was bound against the p. a. & may then take the money out of the bank, but he has the interest from the time of tender and will shall have his costs.

If the tender be of collateral things, it need not be "always ready". There is a practice in Equity where the articles are not taken, but the safe is taken into the court, and the practice obtains in those cases, particularly, where an action is brought for a specific execution of articles, for which J. G. does not wish a compensation in damages. In those cases there is no way of compelling the thing to be done, but by giving a sum in damages, as well as a compensation. The old case of W. v. W. can only enforce it, by putting the interest in the alternative, either to make the thing or pay the value of it. In no instances would afford but a very indifferent compensation. Decree of Chancery for specific performance, enforced by a penalty, or not the same relief is given in an action in the case for execution.

208. 4.

270. 154.

172.

372. 692.

412. 404.

302. 635.

This must be borne in mind, that the payment of money into Chancery is an admission of so much, but when there has been no tender. The Court will not order the payment of money into Chancery. The English law does not

allow a tender after action brought suit and permit it
to be made at any time after suit of cost are also too
strange to the time. The English rule is adopted in many
of the States in the first ^{and} in some others. But the second
is not one to a considerable extent is adopted into their
common law system.

In considering these defenses which have before been
particularly spoken of under the title to which they belong
the remarks in this place will of course be brief.

Insanity is a defense against a right of recovery in ac-
tion on contract. In assumption it may be shown in
evidence under the general issue. But in an action on
a specialty it should be proved upon the record.

Is it any defense against a tort or wrong? Suppose
for ex. gr. a madman commits a trespass or wrong upon
your person. Can you recover damages for the same? You
cannot if he has no profits, the answer depends upon him. This
does not proceed at all upon the intention, for that he is
not answerable but only for the consequence and injury com-
mitted. But for the wrong you cannot recover in
action against a madman, as a defense for ex. gr. a madman
is the case where malice and reason are required to
support it. Whence intention would tell the "case" of the
action, it cannot be maintained against an action in malice.

Coverture, as a defense, has been over and over again the title of Baron de Hume. "Contracts of a feme covert are not merely voidable except as to her own property but absolutely void. If a woman a house or other dwelling coverture, she may place no restriction for she had no power to contract. A subsequent promise would not bind her, no not even if she was under a moral obligation; for what was void ab initio can never be made good.

Infancy, as a defense, has been spoken of under the title of Contracts. If an infant be sued he may plead "that the plaintiff's case ought to be bar'd for that he is a minor, under the age of 21 years." The 11th may reply 1. That the contract on which he was bound was for necessities with our exceptions particularly the articles. These articles are called necessities, and for which an infant is bound to contract are husbandry are meat, drink, washing, lodging, clothes, physic, and instruction. So that the action is not sustained on the express contract, but for the articles received to the extent of their value as necessities. An infant in his circumstances purchases an expensive broad cloth coat: now to him its real value as a necessity, would be no greater than that of a coarse coat, and for that only could a tradesman recover. If the 11th moves by that "some time since he was promised to purchase and such subsequent promise would well support the action, for the contract as to food was a viaticum"

The last being, that on the first, assault is subject to be
retracted; and it does not follow, as some have supposed,
 that an action will not be maintained on that account.
 There is no case in which it has been attempted, but Judge
 Price thinks it impossible.

That is in fact a defence against Force? While there
 are 14 at 20 &c &c - which they are not liable to commitment
 the same remains are applicable, as were made in the
 case of infancy. While under 7 years of age, a child is not
 supposed to be capax vol between parent & the capacity of
 capacity is to be ascertained by testimony; by the civil law
 only from 7 to 10 1/2 the presumption is against his capac-
 ity, from 10 1/2 to 14 in favor of it. But after 14, he is capax
vol and the civil law he is considered to be of complete age
 to do mischief." From that time therefore an action for Blas-
phemy may be brought against an infant as well as against
 any other man.

Impossibility of performance is another defence against
 actions on contracts. Suppose A gives bail for the appear-
 ance of B, and before the return of the B is sick, & a severe
 mixture is administered, for no man shall be prejudiced by
 the will of God. A enters into an engagement of marriage
 with B, before the time of performance & marries her
 to wife afterwards brings an action against A for breach of
 the marriage contract. It now remains to be decided whether
 the will of God is a sufficient defence.

See also
 2 Wils. 20

Pleasantry

Validity of consideration is a term, which in a general way may be given in evidence under the general issue. But in an action on a debt it must be proved. So may be any thing which shows that the bond never had any "legal effect" as Morgan's, Simony, &c. So want of consideration to a contract. The statute of a specialty implies that there was a consideration, or rather, in legal contemplation, the deliberation and solemnity of the execution is taken for evidence of a consideration. But though the agreement be under seal, yet if it state a consideration which is in law no consideration at all, you may demur to it, for the ordinary presumption is rebutted by the words of the deed itself.

These last defenses have not all been considered before under the title of contracts as it is not necessary to dwell upon them.

Statutes of Limitations.

The legislatures of most States have from time to time proper to limit the time within which actions may be brought for the recovery of particular injuries arising, as well from the non performance of contracts, as from torts. In the application of these Statutes of Limitation, some important principles are involved, and the cases in which they have been attempted to be evaded, are often said to be unimintelligible or irreconcilable. The Courts have said of particular cases, that "the statute does not run upon them", or that "they are taken out of the Statute."

but the true grounds on which these exemptions are made have not, till lately, been precisely ascertained. Cases have been continually arising, in which, though the time has elapsed, a recovery is allowed. The law is now more settled, within the time. Three reasons have been given to three different hypotheses which have all been taken into account among the ablest lawyers in the country. In first a case in which, but certainly, fallacious. That the Statute has reduced to a certainty, what was before uncertain as to the payment. At common law 3 years having elapsed without any payment of interest &c. on a bond that alone was considered as presumptive evidence that the obligation was discharged. So that the Legislature to prevent recoveries on such bonds, have removed this presumption to a certainty that the debts were paid. But say that if you can on oath, the indebtedness, as by proving that within 6 months, the debt has paid half of it that removes the presumption and takes it out of the Statute. It is easy to show that this is not the true principle. A man says that he is indebted to him, says "I know", but as you have a good bargain, and as the Statute has said, I will only pay you half of it. A cannot or will, notwithstanding the legal obligation is not. But if you have a good bargain, you may say, for the present, "all the debt". But if you recover a debt, you are to be the first of his kind, or must be paid as well as any others. But if the law has been so interpreted before, then, would it not be considered as a debt? For it could not be said that it is the debt.

5. Mar. 2030
L³ Ray 383420
744

intention of the testator to pay those debts which he had
incurred satisfied. I bankrupt, after examining his
accounts, that he would pay all his debts, that promise
overrode the specific limitation and covered even his debts

The second hypothesis denies the presumption of payment
and suppose that, though the debt is not recovered at law,
yet the party is bound in conscience to pay it, so that
any subsequent promise, or assent from which such promise
may be inferred, will be supported in the former total
discharge. If this be a correct view of the subject, the ac-
tion must always be brought upon the last promise. But
it is not. It is said that it is difficult to know in the ac-
tion of indebitatus assumpsit whether the action is brought
on the first or the last promise. There are cases, however,
where the recovery has been upon the first promise made Gill & Co.
124

An executor to pay a debt due to the testator through him
by the Statute will support an action where first under him
a promise made, after suit brought on a note his estate was
ordered to support the action.

The third hypothesis is in favor of the opinion that the Statute
reverses the authority from the decision of the Victoria Court
on the Court's Circuit, sanctioned by the subsequent report
of the Court. But the Statute was made to
induce the speedy settlement of such claims after a point
of time expired; not the presumption of payment,
but he has put it into the power of the creditor to avail him-
self of the Statute of the law in order to the recovery.

The advantage, which it over him in the matter of the
majorance; and such cases actually proceed in the
the true ground on which particular cases are taken out of
the "Patent." When Europe have first came to the bar, it
was the prevailing doctrine, that there was a presumption of
guilt, and cases were decided on that principle. The first case
he recollects, was on a note, in which there was an endorsement
within the time. He thought that as that might be made
to be the bill for the purpose it was not sufficient to rebut the presumption
of full payment and would not allow a recovery. The next case
was an assumpsit, but accompanied with proof of payment, and
this the court said took it out of the Patent. Afterward, the
Court came to him, he took the complete bar, and that the debt
could not be recovered. On the principle, a case was decided in
the Exchequer, but the difference of principle between the two
judges. Another case not long after coming before the Exch.
the account to the opinion of the Exch. judge, but the majority of the
Court, then composed of the Exch. judge, having by this time
undergone a revolution in sentiment, reversed the decision
of the Exch. judge. While the law was thus unsettled in Exch.
a case came up before the National Exch. Court in which Justice
Lawrence decided, he determined that an action could not be maintained
at all after the time had elapsed making the Patent complete bar.
Justice Johnson was of the same opinion. Another case was soon
after decided in the same way, Judge Wilson in opposition to the
sentiments of Justice Lawrence, and to the prior decision of the Exch. judge. Thus
the question remained until it arose once in the next case.

[illegible]

It is in a book all the same out of the table.

2 Jan. 199
Don Ch 385
L. G. 41
7 Nov. 426
Guth 47139
2 Nov. 152
1 Feb. 29
1 Nov. 191
L. G. 164 381
5 Nov. 191
10 Nov. 191

But there is a set of facts in the case, it is a case of the Statute
for error and yet they are taken out of the table.

Full Law Ex. 142

It is not a promise to pay money that takes the case
out of the Statute as is said in some of the notes, but the
case is to be sure is evidence, that the party owns to make the
debt. It is a more acknowledgment that a debt is

5 Nov. 191
2 Nov. 191
3 Nov. 191
4 Nov. 191
5 Nov. 191
6 Nov. 191
7 Nov. 191
8 Nov. 191
9 Nov. 191
10 Nov. 191
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28 Nov. 191
29 Nov. 191
30 Nov. 191

But the debt may remain and yet the remedy lost.
Two joint debtors, one owes the Statute, an action may be
taken against both, for one cannot be seen without the other
in an attempt to recover.

The Statute begins to run the moment the right of recovery
accrues. That may be at the time of the promise, or not till af-
terwards. In all the Statutes there is a promise in favor of future
covert, infants and persons beyond sea. But if it once begins
to run before these disabilities accrue it does not stop dur-
ing their continuance. If it is not discontinued all are charge-
able on the Statute, for that one could not
be the debtor. It has been mentioned, whether the Statute
affects the action of insolvency or a passport. Where it is found
ed on grounds of contract, they doubtless do. Since if it occurs
out of a wrong.

In a running account between the parties, where a whole
 was charged on both sides there may be many items more
 than six years old which on an action on Book may be 6th 4 187
 not be thrown out, but may be set off against some bond
 in time in the other account if there was no occasion
 to the payment of what settled they also be the subject. And
 this may be usual. And more than 20 years has elapsed
 before the said Deeds were made.

There are Statutes limiting the time for bringing an
 action. In those after the time has elapsed no action can
 ever be maintained. They are never "taken out of the Statute"

But it would seem that for special damages only, as
 from a tort, an action might be made within the ten years
 after they occurred though since the commission of the
 tort itself the time limited has passed, as in case of St. Paul
 many words are not actionable, unless special damages result.
 The question has never yet come before our Courts this year
 where perhaps we can see some structure.

There is a Statute in England to which the power of the
 Court is made within the time limited in case of the
 tortious act. But at the same time so many have been made
 in a tortious case. Hence a Statute in some Statutes there
 can be no time for tort.

Consider now that as it has been suggested whether one
 statute may be taken upon the. A report of action, across
 upon the minute of a woman who before the hearing of
 it is married. It has been generally supposed that she
 could have no advantage of the disability of marriage as well as infancy.

Justice Pease knew a case two children born etc. I still ac-
cused him of the influence of the mother who was married
while a minor. After being 50 years under such a law, she
died leaving an infant daughter her heir, who also mar-
ried under age, and lived a few years appears. After the
expiration of his term, case was again brought
before the title. Decided that the disabilities having been
removed the State did not run. After some opinion was
given that three years ago on an assumpsit that opinion was
asked and in a subsequent case he was satisfied that
it was erroneous.

Eastbrook
2. 2. 2.

A similar case came before the Supreme
Court in Massachusetts, and Judge Parsons gave the
opinion of the Court that the disabilities could not be taken.

The practice has been to plead the Statute of limitations
in bar. I never think that was it to be taken out in ex-
tenuation. For a plea in bar goes to the merits. In the
State of Connecticut we have a Statute of limitations in bar, in
New York there have none. Justice that the action was barred
in Connecticut, would in bar no objection to maintain
it on the bond in New York: for it was not so at the time
it but was merely barred in our Statute of limitations
our recovering here. It operates merely as a bar in statute

So on notes of hand there is a difference in the time of limitations
in New York and in Connecticut, and the action on a note made
in Connecticut paid in New York after 6 years have expired a recovery
may still be had in bar but in Connecticut it is barred
to be barred recovery. The nature and construction of the con-
tract depend upon the law of the place where it was made.

but the time and money of attending a court; upon those grounds the suit is brought. Thus on a promissory note executed in New York 7 per cent interest may be obtained in the Court in Connecticut.

It has been a dispute, point a letter a Statute limiting the time for bringing a particular action, can prevent a recovery in another action, for the same cause. For example, I wrongfully took away B's horse, three years ago, ~~though~~ part is bar'd by the Statute is proven & which actings is said. On the one part it is argued that the Statute was intended to apply to the thing & not to the form for the act; on the other, that no Statute which is an intrusion upon the common law, ought ever to receive a liberal construction, or be carried farther than the terms will warrant, and so the Court have decided.

Accord and Satisfaction

There is a difference in actions as to contracts as well as on torts. In all actions de re for a recovery which must be recovered, it bars a recovery.

Accord is an agreement to accept something in satisfaction of a wrong; or in lieu of some one of the terms of contract. Payment is a performance in specie.

There is an exception, at common law, from this rule. Accord cannot be pleaded in bar of an action in a specialty. But indebitatus quod receptum est, it cannot be subject to turning pro bono nature, but in the words of the common law maxim, must be decided ex terminis propositis.

But accord and satisfaction depend on intention pro bono nature. Money, indebitatus quod receptum est, would be inadmissible in an action on indebitatus. The rules of the common law rule has been over been affected in England in a short time since accord and satisfaction may be pleaded in bar of an action on indebitatus. And English law can see no reason why accord and satisfaction should not follow the same rule as it formerly the performance of something else instead of pay ment.

It has been said as to pay ment, accord and satisfaction may be pleaded in bar of an action on indebitatus. It seems to be a substantial act.

There are more defects than one, accord and satisfaction will bar a recovery of damages only, or it is a satisfaction. And there can be two accords when one accord and satisfaction is possible.

Real actions, it is impossible that accord and satisfaction be pleaded.

3^d. It must be accepted. I want to pay all on
the first of Oct. Before the day arrives A complained
of his inability to raise the money, and offers to pay ¹⁸¹² 1000
in a collateral article which B refuses to accept. In the ^{for S. 1835}
case of Hayes A tendered, and B refused to accept, and ^{1. Mod. 389}
billed his action for the debt. A can never plead accord
and satisfaction, for the article tendered was not accepted
in satisfaction, and tho' the accord may be good, it
is no bar, unless executed. Though in this case the indeb-
tedness might be paid in accord in mitigation of damages.
The modern manner of pleading is "paid in satisfaction
and accepted in satisfaction."

Foreign attachment:

In England by attachment and in some other countries
by garnishment. State debts are subject to attachment
in some states, and debts are subject to attachment
in the other, by garnishment as attested copy for a
process with the debt, if given about a non person
as the attorney of a factor or broker in the presence of the

small abode; which service, is sufficient, by warrant,
to enable the creditor to bring on his trial, & to let the debtor
be or have been an inhabitant of this State, in ^{the} case, a
like copy, must be left at his last or place of abode.

The person factorized, or in the language of the law, the
grantee, may at his desire be admitted to defend the
principal. & being admitted to & an absconding debtor is
served with process of foreign attachment by B. P. after judgment
against the principal, & pays over the money to B. on an ac-
tion brought for the same debt by A. C. may plead the gen-
eral issue and give the statute in evidence, for that dischar-
ges his liability to the principal.

If after the attachment is served upon the property, in his
hands, C. remits it to the absconding debtor, voluntarily,
and the plff recovers judgment, he will be obliged to pay it over
again. Leas if, taken by attachment at the suit of the prin-
cipal, and compelled (in another State) to pay him.

No more can be recovered of C. than he owes to the abscond-
ing debtor. If plff takes out execution against A. if in
his labor at the proceedings, C. consents to pay the debt or
discharge the debt in his possession, it is very well. If not.

Exce fieri may be taken out by the plff against him,
requiring him to appear and show cause why judgment should
not be rendered against him, or in other words, why he refused to
deliver up the property, on execution against the principal.

If grantee makes default of appearance or, to disclose assets,
then required what should be of the debtor were in his hands, at

the owner to be liable to recover the value of the property.

Where the debt attached is not immediately due, the creditor may proceed to judgment, against the principal, but cannot have seizure against the surety until the debt is actually due.

If the surety has paid to the principal a sum in satisfaction of the debt, he may surrender it, but in the execution when there is the property of the debtor on which the officer must levy.

It has been decided in the State, that an execution debt cannot be arrested by foreign attachment. But if execution is stayed the creditor may have seizure against the party named et supra. For example, if the above debtor, have taken out execution against C. before he is served with a process by B. the officer, notwithstanding it is afterwards reversed, may levy his execution and take the property; and until it is found that the attachment is good and may be proceeded on et supra.

Now if the execution be liquid, does not the property come into the hands of the officer, so as to be liable to the attachment or creditor? P. & R. think it does.

But he cannot be helden by process of foreign attachment & recover the damages in debt.

If there are two executors, one a resident and the other a non-resident, the property attached, so that the surety is liable must be paid to the principal. But it is to whom he is liable to pay is the statute provides that seizure may be made on the property of him who has the property.

Composition with Creditors, as a security to them, and that it is not
a security to a certain proportion of their debts in re-
spect to whole is if more is a registered tax. It differs from a
mortgage and satisfaction, which concerns only a single transac-
tion; whereas this comprehends all debts.

Usury, as a security is placed in this manner "that in the 17th
section to be paid, for that it was expressly agreed in
the 17th section that the 17th more than the loan rate of inter-
est. It is necessary that a certain sum be mentioned as the capital
of one sum is allowed as another paid would be
the security made. It is said some in the English Court but
it would seem without reason. In general, it is not a comp pro
Equity was in the State of Union whether there could
be an usurious contract, at which the debt was incurred, at
the time it was made. It was decided that there could not,
for usury the term used in the Statute implies a contract;
and to be usurious as well as any other contract there must
be two parties. Page there as were satisfied with this deci-
sion. The Statute must protect the incurred and the received,
on the opposition of the incurred men. This construction is
satisfactory.

3 May 20th

Former Judgment, for the same cause and thing is a defence to a second action, for the right is merged into the first action, so we hold that he might over again obtain a new trial by rule of Court. If there are concurrent remedies by two different actions for the same cause, judgment in one is a bar to the other; as for example, a here is in the election of the p^lty to go by assumpsit or Trover, judgment in Trover shall bar a subsequent action of Trover.

The remedies are concurrent, when exactly the same thing is required to support the later action as the former.

§ p. 27. In actions respecting real property judgments are a bar to actions in the same degree, but not, if a higher one. Thus judgment in T^rip^lbach is no bar to the action of disseisin.

A discharge, in its technical meaning, differs from a Release, which operates only after a right of recovery has occurred, but a discharge is the giving up of a bargain, before the time of performance has arrived. A consideration, therefore is not required.

Gr. 5. 184.
1. Inst. 177.
2. Inst. 293.
2. Inst. 44.
1. Inst. 293.

Payment is a plea in bar.

Let the defendant in the given evidence to assume payment when there is no statute of limitations.

Performance, where the contract was to do a collateral act, is a full discharge of that of payment, in money and so on. If the act to be performed is one in which a question of time may arise, the defendant must state how he has performed. See if not. For example if the agreement was to purchase land in New York, he must show performance, execution. But if it was to obtain a release, the validity of which, is to be ascertained by the Court, the medium in question must be specially stated.

Release is a discharge of a right of action. If by deed, or writing without seal there must be a consideration; ^{or a price} See, if by a sealed instrument, for that is evidence of a consideration. ^{Rebae, in Reg. is always by deed.} ^{Co. 291.} ^{Co. 292.} ^{Co. 297.} ^{Co. 298.}

A release of all claims or demands, releases all rights of action whatever, whether the debts on which they are founded are immediately due or debts in arrears, solidum in futuro, as for example a bond to pay money on a day to come. See if there is not a debt in present, although solvent in future, ^{Co. 289.} ^{an estate}

A release of all demands does not release a covenant not broken at the time; as in an action on a covenant to pay rent year by year, that 3 months before the expiration of the year, ^{it is not sufficient} ^{and also} ^{1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.} released the defendant is no defence, for the covenant then being broken. None was in debt. Though if covenant had been to pay 100 £ for 20 years, in arrears in 11, or 12, perhaps it would have been released. See if a contract to do a collateral act could not be released.

252-262.
 Row 2 490
 117.
 117.

I release to one and obligor a release to all. Secus si non et non me
 sometime the generality of the words have been so construed to the par-
 ticular occasion for which the release was made.

If the release of a bond against the assumpsit is over with notice to it
 to whom it says interest is deferred I release to it for 100 £ all claimed
 demands whatever. This bond is not released. For this is properly mentioned
 I had the power of releasing it as well as others a release would release
 & defend it out of his rights. The law will not presume that the
 parties have it in contemplation.

2 Ld. 35
 336.
 624.

2 Ld. 295

For he is a command & a caution. W. of 1000 ff. I W. die and in his
 will leaves a legacy of 100 to S. L. who soon after also dies. The execu-
 tor of S. L. in paying the legacy to the executor of J. takes from
 him a release of all demands on the law will not construe it as
 a release of the 1000 ff obligation. For he might not have known
 of it as being his own law for the release.

1000 ff.
 392.
 398.

1000 ff.
 119.

2 Ld. 577

The construction here for must depend much on circumstances.

Discharge by Acts of Insolvency. This cannot be pleaded to actions on
 bond. It bars a recovery of debts only which were actually due and owing

1000 ff.
 117.

1000 ff.
 248.

1000 ff.
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1000 ff.
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1000 ff.
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1000 ff.
 117.

at the time of obtaining the act, and which could have been proved under the
 commission. Bankruptcy of one partner does not discharge the whole.
 The house may be bankrupt and yet one partner last and able to pay the debt.
 Distress by the insolvent leaves one liable in no bar to an action in another.
 For the insolvent was once disposed to satisfy the debt. But the debt is not
 now as now.

Judgment in another State has in some of the States been considered as con-
 sidered as their own. Some however have held that it was only prima facie evi-
 dence, and that the compositum of it must be argued in the Court of the State.
 Thus, for the Constitution says "full faith and credit shall be given to the public
 acts, records, and judicial proceedings of every State." In Ex parte Shaw it was
 maintained as an in rem judgment in one State.

Maxims

Since the time when maxims first came into use the public have been governed by three different maxims, or perhaps three. In the first maxim which was made, the Judges seemed quite averse to their introduction, and scanned with eagle eyes for every error which could destroy their utility. After a while, however, they vibrated in their opinions, to the other extreme, and became equally anxious to elude the objection, as they have formerly been to discover them. But the maxim which now prevails preserves a proper medium between both and alone presents a true and solid security on the one hand, and an unassailable reality on the other. The subtle niceties of the scholastic is judge have in short, given place to the language of plain common sense. In the use of this rule it is to be observed in the first place, that it is universally comprehended both by the ancient and the modern rules, and in many instances by each.

The reference by the parties to any matter in dispute, before the decision of a third person is called a reference; — the person to whom the reference is made, an arbitrator; — when ^{the reference is to more than one} the reference is to more than one, and provision made not in case of disagreement another shall decide that other, is called an umpire; — the judgment pronounced by an arbitrator, or umpire, is called an award; — that by an umpire an umpirage or umpirage is called an award.

An award, when good, is a bar to any action, founded on the dispute, and recovery which was submitted to. To this general rule there is a certain exception with respect to awards made by a court of law, or a court of equity.

Some matters are not ascertainable, as there is to be seen some
Crimes — divorces — or the estate, or character, &c. &c. &c. &c.
 whether he is legitimate, or not, — a gentleman or a common man.

I find to have a judgment made by a jury in a case in a case
made, and an award is made against the party to be paid. It is
 no consequence what was the question before the arbitrator. The
 award creates a debt and on an action brought will be con-
 sidered evidence of fact or if a debt was given, that debt shall
be paid.

Suppose the dispute relates to the ownership of a collateral
action — arbitrator — award — debt — specific remedy, by impe-
aching vesting the property of the article in the party, in law
from the award was made, and the other if he refuses to do
this is liable to an action of Trovee.

If the award is for the performance of a collateral act, as for
 example to execute a debt, or refusal or neglect, an action in
 the case may be maintained for trovee.

The arbitrator or umpire has no power to execute,
 but the arbitrator's award is the law between the parties to be paid to be paid
 and is sufficient to execute their awards. If the award is
 for money, debt due, it is to execute the right of property to be paid
 — if for the performance of some collateral act, Case, or
 for execution of debt, or refusal or neglect, the recovery must be
 in money.

It has been disputed whether on an award to execute
property to be paid to be paid, trovee lies or no
other words than the only words are in the award.
 The ground for the trovee is that the award is to be paid to be paid.

to refer him to the original cause of action. This is not true for it is the award that vests the property and lays the foundation for this action, and not the force of the writ.

[illegible]

incorporation of 300th & 400th & 500th & 600th

There is a practice in some of the States which was
in vogue for a long time acquiescence in substitution in execution
but was afterwards on trial & was found to be utterly untenable.
After that it is the bound in the English books. But the

The parties at the time of the substitution would execute
indemnity. In fact, a party or other competent to issue execution
for the sum and place this account in the name of the
indemnitor & etc. When the award was made, one of the parties
was retained and the other induced to the proper execution
given to the party in whose favor it was executed, who alone
was to receive the execution and recover his debt without
the intervention of a writ. Who was not this a good way?
It was certainly convenient? Because every award is now
a valid one, it has never been obtained in execution. Not 249.
or have and when the Sheriff has received the ex-
ecution to levy, there is no help for the man: he must
satisfy the execution or be taken into custody and can have
no opportunity, as in our case, of contesting the legality
of the award. Almost 25 years since the question was
once more brought before the Supreme Court of the State and it was
regularly decided that the practice was illegal.

1 Inst. 325-9
2 Inst. 446
(Inst. 3. 397).

The substitution is by act of the master or of the
agent or by rule of the Court. In that case it must be
referred to writing & be made a rule of, and accompanied
in this case by an affidavit of the agreement. The object
of this is merely to give an additional remedy. For if after

Inst. 6m. 57.

As it is a party's term to be taken in the last. The party
may of the place resort to the award. There may be a stipulation
that the award shall be given to cover the same debt
not a time not actually to enforce performance. Though if the
award concern the title to land the submission is upon
the award.

Award may be given to a trustee for a minor thing's dispos-
ition of to the minor himself.

A third person may give bond for him, and will be bound to it.
The submission may be by writing or oral the award is by word,
and the parties cannot otherwise; though it is sometimes seen
that without much reason for the reverse, that if the submission
is written: the award must be so.

That law is directed in the submission that award seems to be
referred to the award must be done by the arbitrators, even though
it would otherwise be unnecessary, as to deal it with force
and. It is perhaps it would be otherwise if required to be written
on a paper.

The time for making the award is to be directed by the law
the.

It is the nature of a power to be revocable. Before of the award
the man makes a submission, at any time before the award; S. C. 82.
with the power either to be made or not, what that award is to
be made. Whether he may then or not, has never been decided,
but reasoning from analogy, perhaps he could be said that he would
not be permitted. In a such a case, the submission is not
retroactive at any time before award, as a general rule, and
it has been determined that he has reserved what that is.

versus is to be, it cannot be done.

It must be allowed the award be given to security & by later
 1 Jan 27. is a reservation

The court may choose down the line so as to cover the entire
 24. 55. of the subject, as to what is or is not for the reservation. must
 2. 18. 2. be by writing. Notice must be given & it is no reservation.

8. 5. 18. 31

1. 11. 12. It often happens that parties, without commonly, merchandise
 2. 11. 55. in some cases, agree that all controversies, which may happen
 3. 12. 55. 315 between them shall be submitted to arbitration. The effect of
 2. 18. 18. 316 such agreement, has been the subject of great dispute in that
 It was contended that the parties were precluded from
 bringing an action at law. But the court decided that they
 were no bar to the action, but only subjected the party violating
 to a recovery against him in damages for the breach.

If after notice, one of the parties does not appear by himself
 or attorney, the arbitrators may proceed to examine and award.
 But in many cases the absence of the absent party may
 be necessary, by the purpose of obtaining a certificate or
 examining his papers; in such case it is requested he
 will fully absolve himself by power of attorney or otherwise
 if the submission was by deed, it is, usually, a condition.

Who are capable of Subscribing? Every man who is capable
 of making a disposition of his property, or a release of his
 right, is a general rule, may make a subscription. But
no one, who is under a mental or legal disability, of any kind,
 can be bound by a subscription, as the case of the power the

He may procure another to be bound for him, and he
 is at liberty to do so, and will be justified. Formerly, it
 was held to be so, for an infant could not bind himself. ^{1. Hall 207.}
 But now, it is said, for an infant could not bind himself. ^{2. Allen 277.}
 And it is said, the obligation of another person ^{3. Hall 207.}
 is not that he should do himself as well. ^{4. Allen 277.}

A person who is an executor was formerly considered as ^{1. Hall 207.}
 such. Now it is permitted under circumstances, but is dangerous. ^{2. Allen 277.}
 For if the award were the executor a judgment can be taken. ^{3. Hall 207.}
 would have obtained as law, he would be accountable to the law. ^{4. Allen 277.}
 after who money to the right. So Court of the award of the
 Court, but it is taken, the executor is not liable.

It has been said that a person under an indictment of
 murder, without then a trial. ^{1. Hall 207.}
 They have a habeas corpus, otherwise they would
 have no more rights than an executor.

It has been made a question, whether one partner can sub-
 mit, so as to bind the others, without the consent of the others. ^{2. Allen 277.}
 It is decided that he cannot.

One can be bound by an award, to which he is permitted to
 be a party for another. That he was empowered to give. ^{3. Allen 277.}
 and it is said, as it is not so.

There have been several statements on one side (as a rule) and
 I all agree with the opposite party to submit the dispute
 to arbitration, and some of the necessary facts, and
 about all are bound in it.

I am at present it is true without authority to be sent myself to be sent

Where it is done by sale, it binds him, unless he shows some
binding.

It has been a dispute, whether the husband can limit the
wife by a submission of a dispute respecting her property.

If the property be of that kind over which he has or has a
control, as houses and notes, given to her while sole, and which
he has a right to collect, his submission will be binding; other-
wise not. If the wife joins with the husband in a submission
of a controversy respecting her real estate, or her annuities, since
to her she will not be bound by the award. In similar cir-
cumstances he is under a disability to contract or to consent to an
award or submission.

10. 2 V. 557.

2 Vent. 229.

12. 2 Vent. 229.

Proctor is bound by testator's submission.

What subjects are arbitrable? It was before said to be
a general rule that an award was a bar to all action.
It is a personal matter whether founded on contract or on tort.
An exception at common law to the rule was mentioned.
Where, by the instrument concerning the debt it is referred
to a certain court, as the court of chancery, the court be-
ing ascertained thereby it is not a proper subject for an
award. But suppose the making of the award is desired
or it is agreed that payment has been made, there is no
question but that this is arbitrable, but the award will not
bind.

10. 2 V. 557.

2 Vent. 229.

12. 2 Vent. 229.

10. 2 V. 557.

2 Vent. 229.

12. 2 Vent. 229.

10. 2 V. 557.

2 Vent. 229.

In such the debt. The true reason of the rule is not
that the debt is a certain but that the award is a bar.
or rather, that the instrument by which it is ascertained,
and it is a maxim that every arbitration must be submitted, "et
est iudicium per arbitrum."

The great discretion they exercised, and I have never
doubted it, makes me sure that: In infant of 19 or
20 may expect as much discretion and as good a judgment
as an adult. I 49, and I suppose as well qualified to
make an award. By the 2^d requisite, I forewarn you
4 Mar. 175. that some Proctors will not be satisfied by the discretion
2^d Mar. 175. of the Court, but will insist on the discretion
Proctors. correction not in place because you take in over the con.

arbitrators the umpire was elect. But the courts brought
becoming less more in their decisions, more decisions 2 Phil. 263.
332.
3 Rand. 129.
cause the opinion was still overruled, for they said that
if the arbitrators did in fact make an award within the time,
that award was considered as the real award, and that
the concurrence of authorities in the umpire was only advisory 2 F. 108.
108.
108.
108.
108.
tional, if the arbitrators made an award within their time.

When the nominations of the umpire was left to the arbi-
trators, it was formerly the opinion that they could make
none until the last moment of the day on which their own
authority expired; so that if the time limited for his award
was the same as for theirs, the appointment was a matter
and no award could be made 2 F. 54.
12. Nov. 512.
2 Phil. 671.

But this opinion has also been overruled, and it is now
universally determined that the arbitrators may nominate an
umpire not only before their authority expires, but even be-
fore they proceed to examine the subject referred to them, which
is the fairest and now the most usual way of choosing an
umpire. 2 Phil. 645.
12 Phil. 671.

They may also, when the choice is left to them generally and
a further day given to the umpire choose him after the
expiration of their own, if within the time limited for his
doing. 3 Phil. 387.
12. Nov. 512.
2 Phil. 109.

It was also formerly disputed whether if the arbitrators
nominated an umpire who refused to accept they could
nominate again. The old idea was that their authority had
expired, but it is now settled, that there must be an offer
of nomination.

The arbitrators appear at the time and place and make
 decisions at their pleasure during the time after it
 has elapsed it may be produced by consent of the parties
 after the matter is given. ~~if the parties do not attend then the~~
~~matters will be~~ }
 V. 1811

Unless it be provided in the submission, that a lot number
 than all the arbitrators may make the award, the concurrence
 of all is necessary. And where such provision is made, all
 must attend and sign, unless particular notice is given.
 Arbitrators act under a sole, and when there is no limitation
 in the submission all must of course join in the award for
 they have a joint power, and all such powers must be jointly
exercised.
 1. 1811.

It is a rule that the award must be pronounced at once,
 not part at one time and part at another.

It has been adjudged that a proviso that the award should
 be delivered, in a certain way, is satisfied by pronouncing
 a final award, unless it was also provided that it should be
 in writing.

Whether a proviso "that the award be made and read"
 to be delivered can be satisfied by a read award, has been
 thought a question of some difficulty, but it was finally
 adjudged that what may be delivered by word of mouth,
 may also be ready to be so delivered.
 1. 1811.

And it is said, as a general rule, that a reservation
 of any point for the future decision of the arbitrators is void.
 1. 1811. 2. 1811. 3. 1811. 4. 1811. 5. 1811. 6. 1811. 7. 1811. 8. 1811. 9. 1811. 10. 1811.
 2. 1811. 3. 1811. 4. 1811. 5. 1811. 6. 1811. 7. 1811. 8. 1811. 9. 1811. 10. 1811.
 2. 1811. 3. 1811. 4. 1811. 5. 1811. 6. 1811. 7. 1811. 8. 1811. 9. 1811. 10. 1811.

So either reserve to themselves the power of increasing, or ^{2d. Rep. 246, 247.}
any doubt that may arise on the award, or altering ^{2d. Rep. 189, 190.}
the whole or any part of the award. So a provision for ^{2d. Rep. 122-300.}
the payment of more than was awarded, at some future ^{2d. Rep. 122-300.}
time, if more should appear to be due, was held to be void. ^{2d. Rep. 122-300.}
Leaving, if the increase was as a penalty for neglect.

A distinction is made between the reservation of a further
ministerial, and of a judicial act; the former, it is said, may
be reserved; the latter cannot. Suppose an award that ^{2d. Rep. 122-300.}
land is 100 an acre for Whitmore; the land may be afterwards ^{2d. Rep. 122-300.}
increased, for that is a mere ministerial act. So an award
to pay such costs as shall be taxed would be good, and the party
liable though taxed afterwards.

The same observation may be made, with respect to dis-
cretion of their powers. They cannot delegate their judicial ^{2d. Rep. 122-300.}
authority, but they may their ministerial. The substance ^{2d. Rep. 122-300.}
of the submission must be awarded by themselves.

The ministerial powers delegated must be reasonable
and to proper persons. Thus a power cannot be given to
a person to do an act of which he knows nothing at all; ^{2d. Rep. 122-300.}
to an ignorant man for example, to tax the costs, or to mea-
sure the land.

The arbitrator can decide no more than is submitted to ^{2d. Rep. 122-300.}
them. If they do so much of their award, is void. Doubt the ^{2d. Rep. 122-300.}
parts may be good.

It is also a question whether an award is still kept another
about its value and decided that it was for the said award
and the method of curing the decision of the arbitrator.

to be given for future payment a note payable

Whatever it was the object of the parties to settle was to be
settled by the arbitrator. The defendant's answer had in con-
sequence of his previous answer the payment of it. But the arbitrator considered that the payment was not his
business. But would not have settled the rights. The next was the
issue which had brought a new action. By their first award
that a verdict should be given and the award was taken. 1. B. 1. 4. 5.
2. R. 4. 5.
3. R. 4. 6.
To whom the award was submitted, the arbitrator made it very clear that the award was
to also they may break up in settlement between master and
servant.

Formerly it was assumed that the arbitrator could not
receive any thing which was not at the time of the
submission, as the court had expressed of arbitrators.
But that is not true now. The award was, that A should
pay to B a bond made since the submission. It was
stated to his mind that the obligation could not have
been in contemplation of the parties at the time of the sub-
mission for it was not then made. But the award was ad-
judged for it was for the performance of a future oblig-
ation which afforded the most convenient method of termina-
ting the controversy.

Under this branch of the rule, the greatest dispute has been
relative to an award of a release, to be given by one of the
parties in consideration of money to be paid in the state of all
demands up to the time of making the award. A bond

engagement was formerly considered an error. For who
 knew, said the Court, that that other science or controversy
 may have arisen, between the parties since the sub-
 mission? The new opinion however which prevailed
 was that in order to annul the award, the party who wish-
 ed to avoid a compliance must show that such contra-
 diction has arisen. Afterwards the Judge said that an
 award of a release up to the time it would be completed
 with, if a release was executed, to the time of the submission,
 and now the law is, that even if given up to the time of
 the award, its operation shall only extend to the time of
 the submission.

Another branch of the rule is, that the award must not
 extend to any person who was a stranger to the sub-
 mission. And the old rule was, that if the performance
 was to be made by a stranger, or to a stranger the award
 was void.

The rule now is, that if the performance to a stranger
 be beneficial to one of the parties the award is good. So a con-
 tract between A and B, supposing the same, each
 ought to lay an equal obligation to C, and that B shall
 pay his third part & one third to C and in such case
 C is a stranger to the dispute. To show, I was required to say
 my uncle to C's wife, for the submission between A & B,
 concerned her husband. To show two brothers cannot be united
 their mother's delivery in favour as to the same which each ought
 to pay, award that each of them should have 30 £ and the other 20 £
 to the mother, a stranger was paid.

Again it is said that the arbitrators cannot award costs to be done by Chambers. This seems to be reasonable, for as they derive their power from the subscribing of the parties, they can have no authority to bind those who are not their jurisdiction.

Another branch of the general view is, that "all the controversies submitted must be decided."

Suppose the subscription is of "all actions, for several and not, and the award not for actions but personal actions. If 8 G. 98 is a good award in itself it is shown that something pertains to a real action came before them. The old opinion, was however, of course, that it was void. Suppose the words of the subscription were "all suits", and the award was confined to one, it would be void, unless more than one were shown to have been before them.

It was observed that, if it was provided by the parties in the subscription that in the end the arbitrators were to determine the award as to what to award, and if part only were determined, that the whole award might be annulled. But that would mean no witnesses, if they awarded on all subjects which come before them. It is sufficient to when several contracts are specifically mentioned. There is no provisional clause or stipulation, an award on one should be void, until it is shown that the others were before the arbitrators. but seems in this case if there is a provision it stands.

in 8. 853.
8 G. 98.
60. 1200.
583.

1 Burr. 274
4 T. R. 146

8 G. 98.

Hy 214. 120 The award is a bar only to that controversy, about which
No. 2. 216. The decision is made
Holt. 49.

When particular subjects of controversy are specifically
submitted to and the arbitrators, decide further and
and decide something which was not contained in the
submission; that part of their award is void, and the
other good, unless set off are made, and the person
made up in the appropriate.

Requisites of a good award.

1. It must not be against law.

That is, it must not exceed that to which which is entitled;
and that I mean in law what could not be obtained at
law. Suppose a man abuses another by words which at
1. 214. 122 law would not support an action for slander, yet if the par-
ties agree to submit the case to arbitration, an award of
damages for the injury would be valid. But if it awarded
any thing which is prohibited to law, to be given, it is void.

2. It must be possible. The mean-
ing of the word possible in this case, is the same as when
used in relation to the validity of contracts; it means
that it must be legally possible, as to do to Archangel
in an hour &c. But suppose in a submission, the contract
any between A and B, the arbitrators award that B, who is
worth a few pounds in the world, and never expects to be shall
pay A, so &c. This is not possible which makes
an award void. Suppose the arbitrators to have said, B shall

to one & all. The party has no other view of L. property
The sword is Baroque & Baroque; but I did find some in the library.
how, better to measure the whole, & how the. The canvas is no
longer unfathomable and its validity is restored!

[illegible]

4th It must be certain. As it is the ob-
ject of the parties in submitting their disputes to arbitration
to have some thing ascertained which was before uncertain, that
object can only be accomplished by requiring that the word
"shall" shall be, no more, uncertainty. For this principle, we
assert that one of the parties shall pass the offer for cer-
tain. Such words must have such an effect as to leave the question
is void. So where on a dispute about land the words were
that "he ¹¹ shall convey into a trust to be sold that
the offer should carry the same, it was held that because there
was no certainty expressed in certainty, for the offer was not necessary

in the pecuniary means to be contrasted by usage.

If that part which is claimed to be doubtful, can be ascer-
tained plainly either by the context, — the nature of the thing immor-
tal, or by a reference to something connected with it, the spec-
tion of uncertainty will not prevail. And to lead a contro-
versy, relative to some piles and scaffolds on a wharf, which
it seemed to be a nuisance. The arbitrator awarded that

— that the scaffolds upon the wharf, and that the nuisance should
be removed. The award it was contended, was uncertain,
for it did not specify the person, upon whom it was to re-
move the nuisance, but the arbitrator held that it was clearly
the duty of the defendant to remove the nuisance, and
has erected the scaffolds, and removed them. Whenever there
is a rule for ascertaining it, the award is not considered as
uncertain.

An award is not uncertain, because it is conclusive.

In where the enjoyment of a house was awarded to A, in three
years on condition, his possession was that as soon as he, being
the defendant, should come, it was to be a good award.

3. While 878.
12. 11. 586.
Awards is now settled that an award may be made with
a pecuniary

award, an award was considered, absolutely uncertain, if
no time or place was fixed for the performance. But now the
rule is that if no time is appointed, the award must be perform-
ed in a reasonable time; and place to time must be made

to the person in whose favor it was made, or his place of residence.

3. 878.
12. 11. 586.
They appear uncertain will be helped by an award
where there is a stipulation, by which it can be made to a certain

the signature of B. C. as a receipt. It has no right to sign.

2^d Suppose the party against whom the award is made, is willing to perform both parts the award well as the work. If the award part is not undisputed (undisputed, i.e. a-
gainst him) can he in whose favor it is, object? He cannot. If the party obliged in the award disputes, or actually makes a performance of the invalid, as well as the void contract part, the performance is thereby established.

3^d If several claims are submitted, they are both awarded and the arbitrator in his own judgment takes other into consideration, which were not submitted and after setting-off the necessaries on one side against those on the other awards a sum in profit for the balance; the part ^{which was lost} wholes the whole. But suppose they made up no sum in the award but awarded to A for the contract of 50 g. to B, or the Shander, 100 g. to C for the contract of 50 g. — and also to D, for the contract (50 g.) which was not submitted. In that case, the part ^{which was lost} is what was out of the dispute, would be void, and the res. void. If after rejecting that part of the award which is bad, the judgment as to the rest, is left precisely unaffected, and the intention of the arbitrator, with to no injury in substance, it is valid in substance, even that if by the failure of a part of the award, the invalidity is retained, the whole remains valid, unless that sum be restored. Suppose for ex. that a man has contracted previously that such could not be an award, it was admitted in a contract between.

between A and B, that B should pay 1000 and A should
the expenses; the whole of this award would be paid, unless

A restored the mutuality by the payment of the costs.

So, when an award of a release is to be made, was thought
the court, on an award that B should pay 1000 and A 2. Release
make a release & it was in the power of A by overbidding, or
refusing to restore the mutuality, to establish or avoid the
whole.

2. Release
46.
2. Release
504.
634.
352.

So if the mutuality is restored in any other way, the
award remains good as to the rest, notwithstanding the invalidity
of part. As where A was awarded to pay 1000 for certain
expenses and B to give a release stamp, though B refused
to give the release, the award was good for the payment of the
money, for as the performance of itself would be a sufficient
bar to an action on the original contract, the mutuality
cannot in at all affected by withholding the release.

2. Release
283.
1. 2. Release
115.
Hyl. 1807.

No case can be found with which these rules will not
compare. If the rejection of that part of the award which is invalid
only, will affect the validity of the award between the parties,
the award is void for the whole.

1. 2. Release
283.

If one of the parties has accepted of the performance in the
other. The last condition is void, he cannot excuse himself from
the performance of the rest.

1. 2. Release
283.

There is no necessity for much particularity in the
of the award, at the present day, though for words it was there.
case. So now, if there is some thing in the submission to require it.

Barne: 27

Performance.

If an award is substantially complied with, it is sufficient. If it be to release to the time of the award, it is complied with by a release to the time of the submission. So an award to perform, if accepted, in some measure releases from the terms of it, as if it be, that I shall convey to T. who having previously sold his title requests a conveyance immediately to C. Such a conveyance would be a performance of the award.

Dec. 4. 1841
If the award was not performed at the time, the party in whose favor it was, could remedy near to the old cause of action, but since it is otherwise now, for the award creates a new duty on which the suit must be brought.
4. 1842
It is an award to give a release and to 100⁰ for rent. To fail of performance. What is to be done by S? He has his remedy on the award or on the promise, express or implied to abide in it.

2. 1842
If the award is not performed at the time the submission is made, it becomes, for better, even if a new bond was given a conclusion to the requirement of the arbitrator.

Necessity which the law gives him in whose favor the arbitrator awards, and yet defines.

If a bond has been given the action is founded either on the express or implied contract to abide, or if the release be for the payment of money, debt lies; if for the performance of a natural act, an action on the case, for non performance. The plaintiff may assign as many breaches as he pleases. He must state

state of submission, the contrary, & names of the arbitrators, their awards, and the parties of the business in the parts of the deposit. These are necessary, as well to ascertain whether the award agrees with the submission, as to prevent future litigation on the same subject. The arbitrator should be careful to assign his breaches in those parts of the award which are good. For if all were assigned in the wrong part, the declaration is demurrable. If one only is assigned in the wrong part and the rest in the right still if entire damages are given the judgment will be awarded. If the award be to give a bond with S.L. for a surety, the breach should be laid, in not giving any bond at all.

1. Award 38.
Ex. p. 640
Reg. 171.232

If a submission bond was given, the plaintiff must have his remedy on that or on the award. But the breach in the award is more necessary for the parties to give bond as the law is to refer to them. For condition of these bonds is that whenever either party is dissatisfied with the award, he must refer the matter to the arbitrators. If the above submission is to be given in a particular case, the award is to be given in a particular case, and the arbitrators are to be given in a particular case. The arbitrators are to be given in a particular case, and the arbitrators are to be given in a particular case.

See Reg. 171.232

The award is usually made at upon a single bond for a sum of money. The right then given to the bond is to be given to him who is awarded. After settling it, for to be then stated that the arbitrators have made "no award." This is a double award, but there was no award at all, but the award is a double award.

or more which was valid. Now it would not answer to
 Trial 192. show he intended to reply over that "there was an award,"
 200. for then, he must either of law or of fact must unavoid-
 221. ably be committed to the jury for trial. The jury in re-
 236. sponse must state what the award was, that the de-
 248. fendant had never performed it and affirm the breach. If the
 259. award as it appears in the replication is such the de-
 270. fendant may demur, if that is his object, but if he means to
 281. deny the existence of the award he will reply as before
 292. "no award" which in the rejoinder means no award in
 303. fact. Then the question is committed to its proper judges,
 314. to the Court as a demurrer in law, and to the jury on ac-
 325. tual fact.

If by the condition in the bond the award was to be made
 within a limited time the de-facto if he means to take advan-
 tage of that must plead "no award made within that time."

A plea to, on a bond, "deft pleads no award," deft shows one—
 can the de-facto reply that he has performed it? He cannot, for that
 would be admitting from his first plea. In like all the other
 rules of pleading is founded in good sense, in the deft cannot
 be supposed to come prepared to admit the second plea of the
 de-facto when he departs from the first.

When the deft sets out the award as in notices the breach.
 278. Here are two cases in which he must never perform or con-
 289. sider an act. The first is where that part award to be
 performed to him being void the defendant unless the deft know
 performs it does to the whole for want of materiality. Y. & C.
 290.

...by the owner of the ...
...the ...
...the ...

Perhaps ...
...brought upon a ...
...not appear from the ...
...fact ...
...in that ...
...it is not his ...

...the ...
"no award," and the ...
...there was "an award," on the ...
...there was "an award," and ...
...the ...

If the ...
...the ...

An award may be in the alternative. So that ...
...that the ...
...of the ...
...be sufficient.

If the defendant means to ...
...at supra, he must show the award and then
...that he has ...
...the ...

Justice ...
...the ...

There may be many other ...
...in ...
...the ...

6. 8. 38.

The bill then sets out the award and explains that it does not appear that there were other matters in controversy between the arbitrators here noted. Or the court may please that "the arbitrators never made any other award, than such an award (stating it as it was) to which, if the award (though truly set forth by the bill) was in the bill's opinion a good one, he may determine."

Suppose after giving the bond, the bill received the submission so that no award was ever made. Is this a "renewal" to the debt in an action upon the bond? The bill says it is not, "a renewal," and then the bond becomes void.

If the parties extend the time, in making a new award, is such a submission in the submission made within the time 25. R. 37, in the execution of the award? It has been decided that otherwise not, there should be in such case new bonds given.

When the submission made a rule of court the bill may have an action on the rewards or attachment for costs, &c. & both at once. but where it has obtained a judgment on one or the other, it is barred.

County of Essex, as a general rule, is interpreted in those cases where an intermediate remedy cannot be obtained at law.

W. 25 R. 37
and 38
Ch. 25. 40. 38

Where an award is made in consequence of a reference by order of a Court of Equity it seems to be a reasonable conclusion to say that a bill for specific performance will certainly lie. This is a statutory act. But where the award is made in equity, without the intervention of a Court of Equity,

will not be "unless there has been some opinion
 given in the award by the parties or subsequently, or consent
 to accept it." In other cases Chancery will leave them to
 their remedies at law. There is no case where it has been ^{Page 24}
 otherwise decided unless the submission has been by rule ^{3 P. Wms. 67}
 of the Court. In 1st case is a case of this kind. Once ^{1000. 64. 110}
 the parties after accepting what was to be done by the ^{18th 74}
 other party refused to perform his own part - saying that ^{3 Rep. 64. 22}
 the other might seek his remedy at the law. A bill in
 Chancery for specific performance was sustained.

A defective award was made, in which one of the parties
 was required to convey a parcel, under the offer to buy, & it
 is consideration. In doing which by the other, in which he ^{2 Vern. 24}
 intended to take advantage of the defect, the man who
 was to give the money replied that he did not intend to
 give the ~~money~~ which the other agreed to accept, but
 afterwards refused. A bill in Equity was brought - saying that
 the bill was made for money by the law & that as such it
 is to the advantage of the party in order to avoid a specific
 performance, which was granted. This could not have been ^{1000. 64. 110}
 on account of the award, for there was none.

Wherever there is a subsequent agreement then Chancery will
 interfere; and even where a defective award has been reported
 in the Court law does not go so far as to say the party under an
 impression of a benefit arising from it at law. ^{1 Rep. 64. 110}

How an award may be avoided

240. How an award improperly made may be avoided?

See the plan of when the subscription is by the order of the parties) It says the award can only be set aside from a total disallowance of claims on the face. For as if it be not shown to me & those in which have before been introduced to be shown then for a 2nd award. Provisional awards cannot be taken account of.

Don 387. unless the subscription be by order of Court See that case & see.

2 Feb. 149

3 Feb. 529. The Court is so much more to show cause why an attorney

should be considered a claimant. He must show that the award was properly obtained as a compulsion of fact & that Provisional there can only be relief a claimant in Part 1 & 2.

In Don 408 but there we have a Part 1 & 2 of Don 408 & Provisional matters more considerable & clear as at law. If the evidence in it be the same, it would seem that a Part 1 & 2 to prevail in Don 408, should not be rejected in Part 1 & 2 Cases in which Part 1 & 2 is in Part 1 & 2 or Part 1 & 2. Long of the time arbitrators being Provisional accusers one of the parties continued to hold their meetings at such times and places that the other ^{might} could not attend. On a bill in Equity here, it is the injured party the award was set aside. To show some of the arbitrators held private meetings with one of the parties.

Don 408

It also where the award was shown in Don 408. In another case where the arbitrators were agreed as to the rights of recovery just offered as to the same - one insisting on an award of 1000^l and the other for 350^l. An umpire was sworn, who reported as heard to say "He was sworn to make a report of 1000^l" which he actually did. The Court then set this award of compulsion, and "Where the arbitration found to be over. So where on the request

2 Nov. 1801

of one of the parties the arbitrator proceeded not to award
 until he should have another hearing. But afterwards on the 11th Nov. 1851
 as up then remained the case, the arbitrator in 1851
 set it aside. And to believe, although for many years there
 had been numerous accounts, on which from time to time the
 law struck the business men, some to settlements of the
 law looked to arbitrators who without the law the settlements, 1851
 remained the law, now the law was out of the way
 and business men to result for their selves. In award given
 in 1851, so certain, was the law in 1851, for the
 awarding of the law. To where one of the arbitrators said
 "I mean to make the law cost" on a bill in Equity, the case
 was at law. In a conversation between the arbitrators
 when a case was under consideration, one of them said
 that he was not sure who the parties were "he would not
 put any of the facts to which the other replied, not he would
 "not put it at law," and I related the case to the arbitrators, against
 the award.

In then cases where there was no proof of negligence or
 inability the award has been set aside on account of the
 facts of the principle. The arbitrators after the award that
 they had to be made public in 1851 on received 2 Nov. 1851
 their law before the arbitrators. One of the parties on the 1st
 of Nov. 1851 had refused, on which the other said the
 award was ought the arbitrators on the 1st of Nov. 1851
 and refused again on the award. On the 1st of Nov. 1851
 the award was made on the 1st of Nov. 1851
 to 1851 after the award was made on the 1st of Nov. 1851

It would be vain to cross to allow those to be arbitrators
 2 Nov 28. who had an interest in the event. The Chancellor was of
 opinion that the award ought not to be enforced.

The parties were so considerably that witnesses will subscribe
 the award. To whom one of the parties when called for his
 testimony, left back an important paper in his hands. After an
 18th. 77. ^{more} in re, favor one of the arbitrators, was heard. To say that his
 opinion would have been such, but that he knew of the
paper, & Chanc^r gave relief. If the testimony which it would
 have produced in Chanc^r in the sentiments of the arbitrators,
 the award would have been enforced. Cont.

If the objection to an award appears upon the face of it, as if
 24th Dec 28. it is against law, uncertain, impossible or contrary to Chanc^r will
 not interfere, for there is an adequate remedy at law.

It is not a mistake in point of law. Equity may not
 18 Nov 28. ^{the 4th. 1830.}
 21. 1830. ^{Widdow's} decide the award.

To it on the point, it appears to be contrary to the
 rule of 8. of Equ^y, as if it concerns an infant whose guardian is bound
 to sue him that he shall when of age come, stand, for the infant
 may die, or refuse.

An award then can only be impeached from objection, appears
 on the face of it, or from extrinsic evidence, such as impossibility
 or conscience in the arbitrators, or conscience in one of the parties.

It was formerly the opinion, that if the award was not
 performed at the time limited, that the party to whom a
 award was made, must resort to his ordinary remedy at law. But
 the award may now, if occurs, be enforced in law through action.

Private wrongs

1 Stander.

Flavour, according to the usual division is of three kinds
1. By woods. 2. By cordings. 3. By some pictures &c.

*Ilander by words 25 of two kinds, 1st words in themselves + pos 405
admirable, 2nd words not admirable in themselves, but be- 789
coming so by reason of some special advantage arising
from them.*

The General rules relative to oral Standard, apply to written.
Book I of oral.

Malice and malice are not nouns. What is best meant by the word malice is best expressed by the Latin word ma-
litia, by which is understood not only a personal disposition
but any improper motive excited for evil was being a
For words in themselves not vicious, as a general rule the

+ L. 15. 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

180. 276

180. 276

But the word "action" at the time of the words spoken is action-
able.

The punishment of the crime is in the nature
of the words are action & the punishment is in the nature

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Ex. Phorcioe one with being the father in action & the father
is not liable to im-
prisonment unless he disobeys the order of the justice.

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To send to exclude from society, as to charge with having a
contagious disease.

But the words to be actionable in this head must charge
a present disease. Formerly it was otherwise. See case in case

Under this head, respective words in the present time are action-
able.

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To send to remove one in his possession or trade. Ex. To sell a man
or a house is actionable. To keep one to injure or mistreat is
To be in possession of one's estate or goods. "He is no longer" no more
lawful than the slave. To injure or mistreat a man or a
woman in his possession.

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In this case the law is not to be in his possession
that at the time of the words spoken, he was a master or owner.
Proof of gift & action as a lawyer is sufficient.

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To be in possession of one's estate or goods. "He is no longer" no more
lawful than the slave. To injure or mistreat a man or a
woman in his possession.

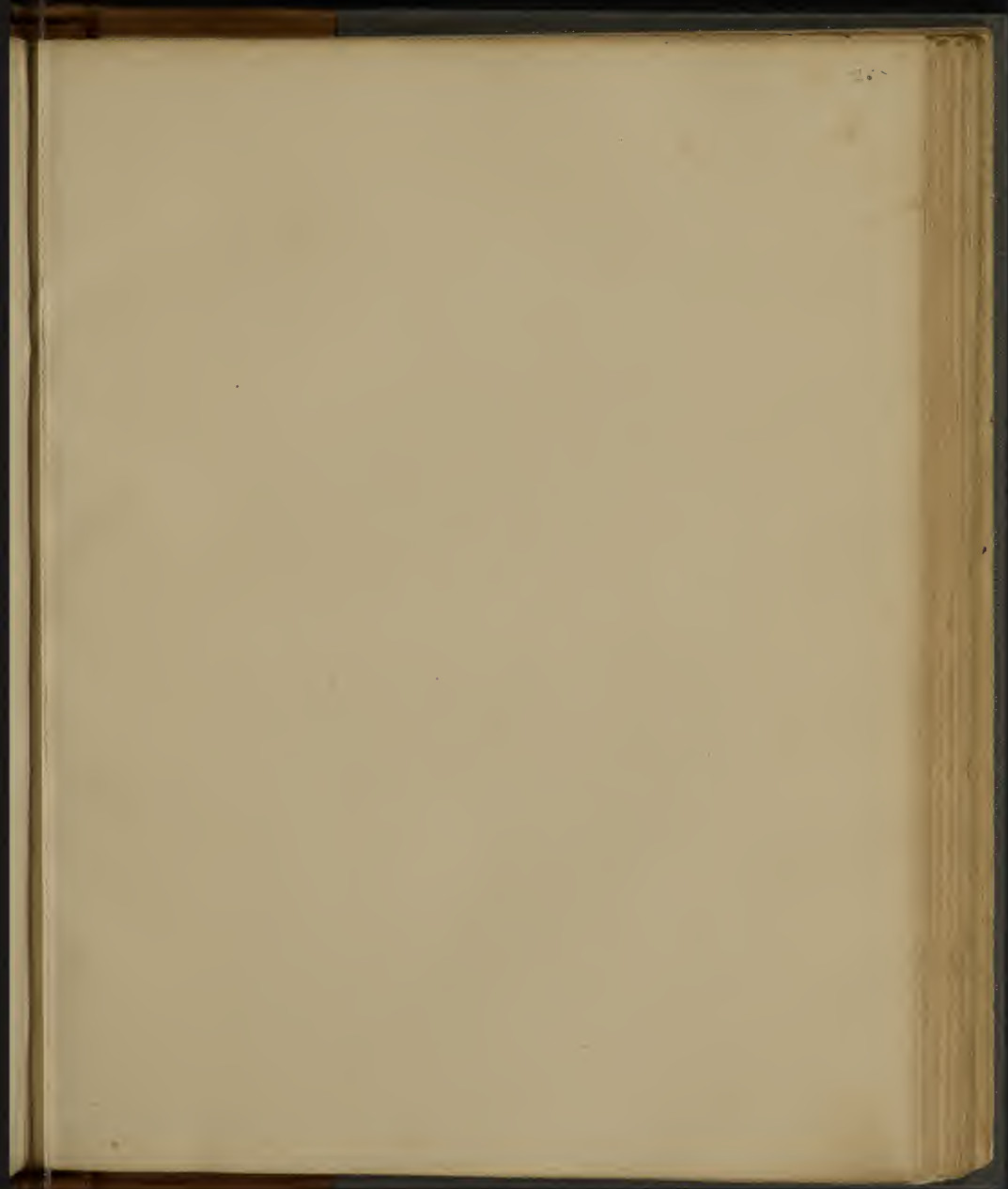
4 Geo. 488.102 But words charging a person in an office of trust or honor,
Talk 595. not of probity with want of ability are not actionable.

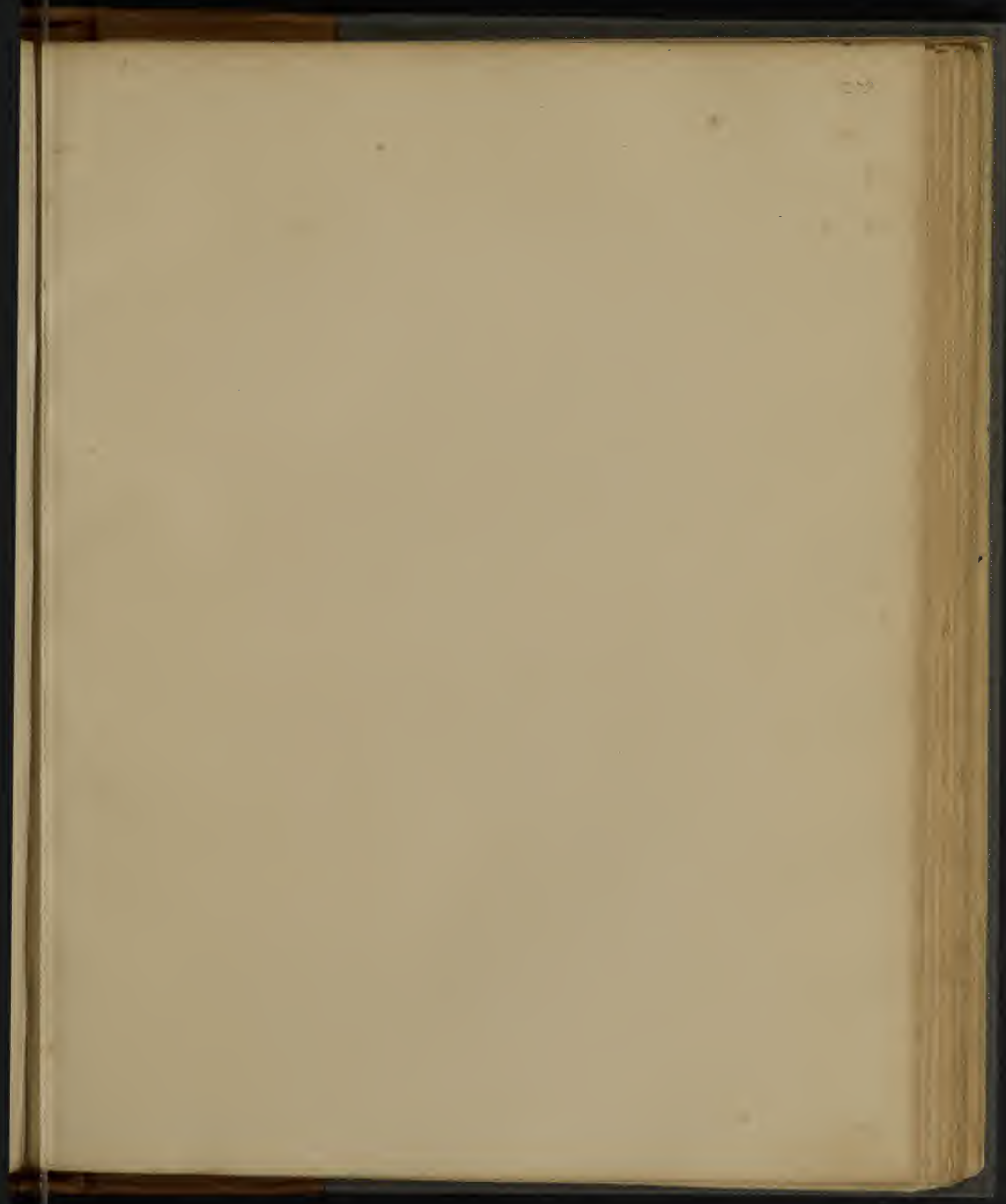
Talk 585. Secus, if they impeach his integrity
Talk 617. Secus, if they impeach his integrity
2 Geo. 488.102. "Double-headed Justice" not actionable.
Talk 595.

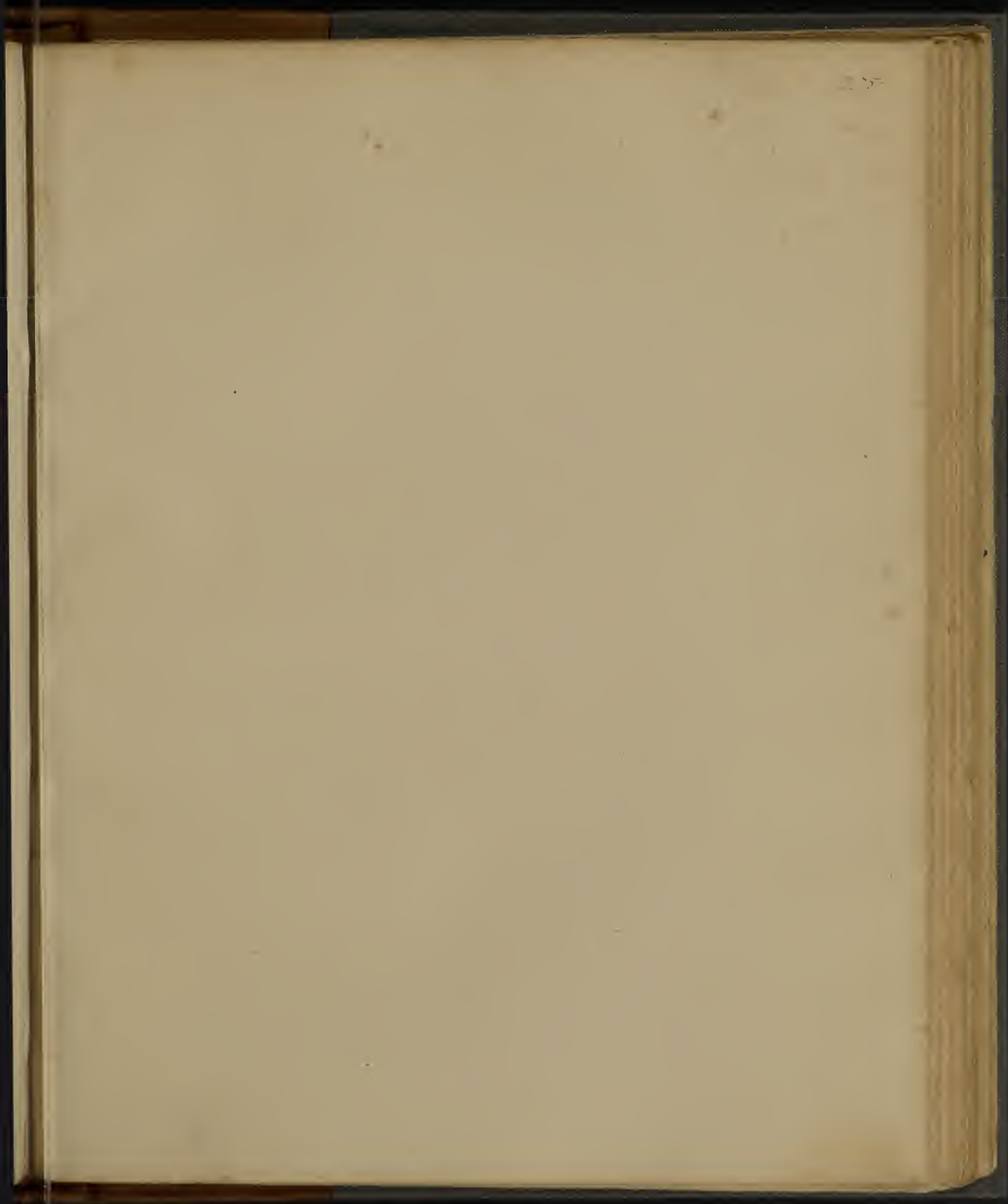
Paul 5. To have a person in office, in either case with inclination
which disqualifies (or principles) is sufficient to charge any act.

2 Geo. 488.102. When the words spoken, do not of themselves import to have
Talk 585. been spoken of the plff in his official character a colloquium is merged

2 Geo. 488.102. Secus if the words themselves do import a reference to the
Talk 595. plff's official character. Ex "He is a biased Justice."







280.

Now the answer to the question may be so even to the sub-
stitution of truth to of any falsehood. For in many cases, both
would have an equal tendency to interfere with the Cause.

Plutarchus has been known to abide soundly with
with justice than the principle will maintain. Even thus
however consistent it may be of justice, which I have the satisfaction
of observing to be even in relation, were hardly bound to force
this regulation. But the fact is, that it is to be observed
in cases of this sort. But it is worse to be a law, if, for
another, were allowed to be corrupt. There is great difference be-
tween corrupting the voters, and defiling of voters ^{men}, for the latter would
have a right to attract the truth to be given in answer, or

received the money from the West India Company, and even after that
 that of his master was found in the place where he appeared, and for each of
 it. With all this evidence was it the man who took his name
 as have been liable for a suspension of jurisdiction? Every means
 common sense would say not. Yet that was us, I have been
 misled.

In a case which came up on similar principles, in this Hall
 it was decided that an action could not be maintained notwithstanding
 stealing; no crime was committed. There, supposed to be stolen, was
 on board, found in the possession of a suspicious-looking stranger, who
 was apprehended and prosecuted to the full. It afterwards appeared that the horse was
 taken on a pike by the owner's son, and let loose, and came honestly in the strange possession.
 The case may be such that probable cause will be presumed, or
 where there has been a mistake even by a suicide in a mistake. The
onus probandi upon the plaintiff.

See also
 that in Howe
James's case
 where an action
 brought by the
 master of a
 ship, who carried
 off the ship

To action to recover damages for a fraudulent conveyance suffered from
that in a fraudulent conveyance. That is brought to obtain redress
for a wrong to his reputation, in that the gift is only
conducted for his expense, trouble and anxiety. For these
reasons the court stated that damages are not given.

The action can not be maintained against a person ^{in a} trust ^{in a} trust
for his own civil suit without probable cause, for it is a claim
of right and he is liable to costs. The original suit must be at an
end before the action can be sustained.

There are three classes of cases in which it will lie.

1. Where the suit was commenced in a trust which had no special
direction whether with an intention to over the gift or not, for he
has been thereby unnecessarily put to trouble and expense. Some

cases, 2. 55, that it would be recovered that the gift had been made.

2. Where the gift is in a civil action. Some that he had no claim or
right to recover. In this case, the gift of the action is that it was
the gift of the gift to recover. In the case of some there has been some
doubt of opinion. Some cases have a claim which he knows
to be in a civil action, and yet he is permitted that the gift will
be paid. The true rule is that if he knows he knows only ^{5. 9 32}
with no reason to recover, it will be allowed. In some cases ^{1. 229}
at law and equity so it he means to sue in equity ^{1. 229 12}
discovery, no action can be maintained against him ^{4. 5. 4}
that if in the course he intends to sue for it he cannot
make any claim and a claim to recover will be allowed.

Charles Sumner

Waltham Mass. 21st

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are trouble and vexation of mind, I do not, on this station, hear
much of it, & I am glad to hear of it.

The same day, indeed, are occasionally, I shall think be allowed
to the young, and then make whole to the State.

I hope there never has but one caused in his life, and I do so
for a certain action.

Freeph.

Freeph. is a name or an. is given to a man's person or his prop-
erty. It is given under this name, because, about his real property, we
have heard under the title "Real Estate."

In Freeph. there is no case for. Every one who is involved
in a combination, or aiding, or abetting, is as much a partici-
pat, in a real estate, as he who commits the act.

It is as he does in this action or one above. The same is how
over others from that in a court, and over all others, in that
there is satisfaction cannot be obtained from one other person.

In real estate, the same is how. But in Freeph. a person's admission
without satisfaction, will be a reason against the others.

The reason is obvious. In a joint and several action, it is certain
and is ascertained to be due (in certain cases, as in a joint and several action, it is
what would be the whole or divided to have. But in Freeph. the
same are uncertain. If one of the joint was not pleased with
the result of the way, were the law the same in Freeph. as in real estate,
it would be inclined to bring a new action, to make trial of
another way, and might thus at his of him. Having fall of him
with separate action.

Freeph.

I. If injuries to the Person, for which the remedy is Freeph. is given

Freeph.

Freeph.

Freeph.

1. Freeph. as distinguished from a battery, is an action for
force or violence to the person, or to another, as in
Freeph. is a person, but at him, within reach, or within
reach of him, or aiming at him, with the fist, in a threat-
ening manner. The remedy in this case is for the wound, and
to the honor and person of the injured man.

Great work.

2 Jan 1882

8. Batteries which always enclose in a Line or the several
series of an injury to the person however small in a rule, or
despotic, violent, or wanton manner. If one brow beats or
strikes the head another it's a Battery as much as if he actually
beats him. If it is a second blow one man strikes another
again it a third into his back and strikes him, it is a bat-
tery in the first blow and not in the second.

None more from want of due care, caused an irreparable injury to another whether intentionally or not it is the fault of the due care & prudent such care is more ordinarily use. If we were ever more the world would be a different and glorious exchangeable. Suppose L. was cutting wood and as W. was passing his axe - having the fire off from the sled and wanted him. This would be exchangeable. But if the same thing had happened to him when under the same no notice to the person or the owner, there would be a want of due care and of course a liability.

But of the accused I should like to hear. I hope with the aid of Christiana Fare, still if the person who danced the waltz in the parlour was an Englishman, that he would be held in a state of assault and battery. I write on a notion of killing the mysterious horse, first over a fence and accident will let Chase be hanged for it. Now the if this horse were a English one, I would have been justified in murdering it. But in case we will not use against him. The distinction of the animal as an innocent one, creates a difference between an animal and a murderer.

There have been some cases under this head in which
there has been a great difference of opinion, among the Judges
whether this action could be maintained.

The rule is laid down that the damages must be unavoidable
and not consequential. In the celebrated quint case, 11 Q.B. 895.

Lord Blackburn differed in opinion from the rest of the J. It
was decided that where the proximate cause of the loss could
the injury was unavoidable, the plaintiff could
be maintained, but the damages which were consequential. It
was also held that where the immediate cause of the loss was
not having the cause of doing mischief, if the direction is
turned by some intervening accident or necessity so that
it does not injure to any one, the proximate cause is liable.
In Freeman & Gutterin the rule was applied. It is liable for horse
to run over W. It is liable for fault and battery.

It certainly is not necessary that the person who does some
wrong by the other to increase his liability. Suppose a person
throws water on B's fire. B is liable on this account.

It has been observed that if the injury causes the con-
sequence of an unavoidable loss, there is no need of a concurrence
of the cause or accident to enable the party to bring the action.

In the ordinary case of the person who has committed the wrong
and in the ordinary case of the plaintiff having a right to the property
damages cannot be maintained, if there is an extenuating
cause or accident in the case. But in some cases the case
is different. It seems to be established that in some cases the
damages can be maintained where there is an extenuating cause.

suppose the house is one of the first that is run over
by a horse or carriage wheel. That it is not the case
into a street and then accidently to be run over an other
wheel will be in vain because the law is not intended.

in cases
of the
law.

If one has not a drunk in the street and is not
into a house in any way injured him no action lies for
only doing his duty.

To in all cases of recreation if it is not at all unlawful
if it is well, the action for an accidental injury will not lie
if it is not.

There is a question under this law as to when there is an
offence both in the English & in our own. Where two persons
do not voluntarily to fight, if one is injured he is not in
England and Battery against the other. In these cases, the law
was before the Statute, it has been observed, (the words most
involuntarily) that he might be injured, and that it was an
injury to do an one's duty. For that reason, the law
requires that there should be no intention, and the law is
in perfect analogy to the law of libel or to some other. In
these cases the law is agreed to be the best of its kind, the
law requires to have its substance as to the law. The same reason
I think is applicable to the law in our conversation.
The law is for the law of each but the law is not. What then
ought it not to be required as to the law? The opinion
of the law is not dependent on the question. In the law books, the
question is how far it is necessary to the law in these matters.

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2. 10. 174

These groups

Admitted in Ballou

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There is some difficulty, in many cases, to determine precisely what it is the duty of the jury to do in their own cases. Every honest feeling is correct with the principle that when in opinion of the jurors, the provocation to the assault was intolerable, the claimant ought to be relieved before the jury which in this case would only one percent for the injury was him. In many instances, the jury does not deserve a case who they may not the jury cancel down the damages not more to a trifling sum but to none at all? It is very often argued by the lawyers in many cases of this sort, that the offense to the public is a precious one, and that damages ought to be given to the jury, on that account, besides the satisfaction for his private injury. There is no foundation for this claim, in any case where the public have provided a punishment for the offense which is committed against them. Thus have officers appointed for the very purpose of executing the laws so far as they are concerned. Thus can the case of these cases, and if the law itself will not do it. This doctrine then established would create some inequality, for if the individual who commits the crime after the law, in addition to his punishment from the public then he is liable for the offense, the law is applied to him, and he is liable for the offense as well as the individual who committed the crime. "But is man liable to be punished for the same crime."

rev. 2009²⁴

been otherwise accounted for. The law in many cases
 was such, so that the Legislature had no power to pass
 insolvent acts and of course no authority to make a writ
 case for such a writ. The Legislature had a
 writ of habeas corpus and a writ of habeas corpus. The Sheriff was
 then ordered to deliver an escape. One question which
 was discussed before the Court was whether the Legislature
 of the State could grant a writ in cases of insolvent debtors.
 (But the question was not affected with the case.) But the Sheriff
 relied on this principle, that as it was not appear in the
 "bill of rights" nor in the writ of habeas corpus which was
 founded upon it, what the petition was deemed the power
 of which the man was exempted from arrest and so on.
 Apparently clear that a writ of habeas corpus was not in many other
 cases. He was bound to presume on the words of the bill
of rights, that this was in all cases where the writ
 authority to prosecute arrest and commit was just-
 fied in delivering him up. And this was the final de-
 cision of the Court. The case of the Marshall was cited
 on the other side to show that the officer was required to
 be executed on a writ of habeas corpus to go to him whether
 the Court actually had jurisdiction in that particular case, when
 it is a question in the writ or not. Though the case of the Mar-
shall has never perhaps been directly overruled, the Court
 in the Marshall case said many things which would not be
 consistent with the case (and the case is not the same as
 the Marshall case) and the Court in the Marshall case
 said the writ was not in the bill of rights.

Private wrongs

False imprisonment

The provisions of this Statute together with the exceptions have been copied into the heads of most of the Statutes. It provides only the execution of civil process on that day: I leave for a criminal. Hence a man may be arrested on that day as well as on any other. If the officer executes process according to the provisions of this Statute an action for

false imprisonment will lie. The exceptions they may be called so, are in favor of the Sheriff or bail who show cause

38. Reg. D.

17. Stat. 18.

to take in the S. W. with the person who has been in their custody and escape. This is not however by virtue of the process, but because he is their prisoner. The bail may justify taking their principal in another State: For the existence of this right taking furnished by the bail gives a certain one as the defendant.

Suppose a person is arrested on Sunday, and kept in custody until the process can be read to him on Monday, there is no doubt but that the officer would be liable to an action for false imprisonment, but would the subsequent arrest be a business in that manner be a good one? The principle is the same as in the case of breaking open an outer door of a man's house to make an arrest. Doubtless, the Taker would in this case be liable for the first part, but the question recurs, "Would the arrest be valid?" It is remarkable, that in a case which must so often have arisen, the authorities and materials for the formation of an opinion, in the books, should be so scanty. The decisions in the books seem to have been contradictory. But it is

Private wrongs

False imprisonment

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said action in the Barth case writers that though the sphere
in breaking the door indicates the liability to a recovery in tort.
page 1. Still the arrest will be good. This principle is sound & is
supported by S. Co. 92. which is always resorted to as an
instance of high authority. Not in False News opinion here.
has been a revolution in the law on this subject since that
time, and the true doctrine now is, that no man ought
to derive a benefit from the violation of a law. If the pro-
hibition of making arrests on the Sabbath, or of violating
the sanctuaries of a man's own habitation, imposes salutary
restraints, and that it now, we have no right to doubt, sure-
ly men ought not to be encouraged to disregard its provi-
sion. If the principle affirmed in the book, is solemn to be
true, the temptation will be strong for those who have large
assets to secure, to risk the damage for the trespass.
False imprisonment if they can obtain thereby the trade
of their estates. And by the same rule, the damages taken
would be given, should be not for the arrest, but only for
the actual injury sustained by the trespasser. From
the opinion of the Court in Cochran, I suppose have supposed
that there had been some decision in this, we are not pos-
sessed of, overruling the doctrine in the case above cited. S. Co. 92
The Staff (in the case in Cochran) had hired a room, in the inn
of Barth, into which the officer after entering the outer door
which was usually open and common to all the rooms had
broken to arrest him. He therefore prays the Ct to discharge him from custody. Now if the doctrine in Cochran,
is

Private wrongs

False imprisonment.

is correct, nothing could be more futile in the application for a discharge from an arrest there discovery to be good. The Court would have no title there at the threshold. But instead of that, they went into a long run of reasoning to show that the door which was broken was an inner door, which the officer was justified in opening; intimating that if they were forced it to be an outer door they should have risen to the prisoner. It matters not, let our brethren be so far from whether their decision on the question where the law was correct or incorrect, the principle on which the whole case was constructed is in repugnance to that in the case in title. The same rule which prevails in these cases, with the same force, applies to arrests in the Police. 1st. 1853. 2nd. 1854. 2. B. 1854. 1st. 1854. "No man whose it can be prevented shall avail himself of a violation of the law."

There are some cases, indeed, in which it has not been decided. It seems to mislead one with his horse — takes up a stick, and knocks him off, and obtains possession of his horse. He cannot recover the horse in trover, for he has no title.

The rest of the law on this subject will now be considered under the head of the defendant's defence.

There is a defence of battery, which has not been considered under the title of defence to arrest. There are cases in which the defendant is justified in committing a battery, but is required by law to do so. A justification must at common law be proved pecuniary; it admits the fact but excuses it. It is necessary that it may be done in order to make the law good.

Private wrongs

Defences in Prigg's against the penal 203.

"We have one person who another about to do mischief, it is
 his duty to restrain him, and in action of habeas corpus
 not is supported. So the arrest of persons whom we have
 every reason to suspect of crimes is justifiable, but it must
 not be made under unlawful, or the 'vanity' of the law. That is
 the duty of every citizen to maintain the law, and to see that
 it is not violated. To those who are within the law may be
 for wounded but in that case, under the law, he must be sent (Prigg, 180)
 must be sent to the prison or hospital, so that he could
 not take him into the wounded. It is the right to take the man
prisoner when he has a capital or felony, for the honor
 of the law will not allow him to return that he could not arrest
 the prisoner. As the law moves, the officer has a right to pro-
 ceed even to the execution. He must be careful however
 to do no more just or much more in his arrest, and must
 not realise or redeem.

"Another defence is 'an assault on himself.' This is in
 the nature of self defence. A man is not obliged to wait
 until he has received a blow, if he sees he can in pre-
 venting with a blow in a reasonable manner he is not
 obliged to restrain himself until he is driven from con-
 tention. He must do no more however than is absolutely ne-
 cessary to repel himself from the attack. But if he does
 a little more than reason will, he is unlawful & liable
there to punishment, or even death. But if he does nothing
more than is reasonable, the law will be in his favor
 & he will be acquitted of the charge. For if he does
 never do more than to save himself he is not liable

Private usage. Defence to assault & battery.
 A man may not be a battery for violence or an attempt to
 commit violence upon his child, father, mother, wife, or man-
 te; a better a man can justify a battery in defence of his
servant, has been doubted, but it seems that he can.

In these cases, the father or had a right to do every thing which
 the son who is abused may, and no more. Suppose A's
 son is beating B. Can his father assist him? no, not in do-
 ing an unlawful act. So if the wife is a tenant and she is
 beating another, the husband has no right to join with her.

Another defence is "modeste manu imposuit," to prevent
 the s^r from entering his house, or carrying away
 his property. The d^r may always justify the s^r & excuse
 to prevent him; so that it is not always necessary, though
 such is the form of the pleading, that the s^r in the form of the
 lawds should be viol & the. But if he has once obtained
 possession, the d^r cannot justify disturbing the peace to
 120. 52. regain it. He must resort to his action. If one man has
 120. 54. here taken possession of the property of another he may
 call a re & re immediately to the s^r.

In several cases, where there is no justification, evidence
 may be admitted in mitigation of the damages. As if
 the d^r was provoked by insults or it will very often go
 far in reducing them.

If a man however brings himself into a passion that so
 he from extenuating, rather aggravates the injury. So if the
 d^r has been injured if the battery was to gratify revenge, &c.

Joint verdict Defendant cannot be tried by a joint jury
 because to give one to, requires more it than to give
 one to each, it is a great deal more, on the contrary
 there several of them, please different juries, the trials
 must be separate, or if one should join issue to the jury
 and the other should demur.

As, in the old execution rule, was for one sum in damages,
 for against each, the jury, where the trials are separate,
 must give a verdict for the whole, so if the damages are
 determined against the right party, then for the whole, and execution.
 To be on the damages the declaration is found against
 him, though against the others the jury find a verdict
 execution can not issue, for there was no proper declaration to
 support it.

Where the jury sever and apportion the
 damages to persons the rule entire, execution ought to
 go out for the amount of the whole, against them all, but that
 is not the rule. If the jury sever and apportion the damages, he
 can have only one execution and that for the highest sum,
 against all, not the aggregate of what was apportioned to each.

I ques B & C, promises default, C appears, and is tried
 and gives a verdict, execution for the sum found against B
 goes out against both parties.

The time in, & out, is immaterial, if it is within the
 time of the statute. In that case it can not be removed
 by a subsequent promise.

The verdict against the defendant, if given, the plaintiff cannot
 be given in evidence, in the suit of the party, for the
 promise has been made and made is proved by the
 time of the case.

The writ of Habeas Corpus is different in its nature from all other writs. Its object is two fold, 1. To recover damages if there has been a trespass, and 2. To receive back the property, by substituting a house in its place.

At common law it lies in two cases only, 1. Where property has been entrained for rent, & 2. Where cattle have been impounded, & carried away. With us the Exp. law of distress is not in use. Where they have power when rent becomes due, without bringing suit, to go upon the land and take the property. Of course it was liable to abuse in the hands of the landlord. What is called the common law on this subject is now in fact but an old Statute which in the times of General Cartwright the common law obtained.

The writ commands the officer to restore to the party his property or to receive a house in its place. The writ does not, however, if on the trial it is found that the tenant owes a particular sum, by paying that sum, the house is restored. But if the court find that the tenant owes nothing to the landlord, or since against the landlord for the trespass, the writ may be obtained to restore the property, though the tenant acknowledges the debt to be due. In the case of the landlord is an action for a house or a house or a house in its place. In the case of the tenant is an action for a house or a house in its place.

Another case where the writ lies at common law is where cattle are impounded, as a pledge for the satisfaction of the creditor. This writ does not lie for the recovery of the property.

Replevin brought

Replevin.

The owner of the cattle by giving a bond to recover the damages which shall be recovered. On the trial of the writ brought by the writ of replevin if the cattle are proved to have done damages, then as the negligence of the owner, on the payment of those damages and costs, the bond is discharged. If on the contrary it is found that the distrainer himself was the cause of the damage, and no accident is given against the owner, the distrainer is found to be a trespasser. Before the replevin, the cattle are in the custody of the law. The distrainer has shot his remedy and cannot then have Replevin. ^{see of the writ}

But there is another use made of this writ of replevin, where property is attached to secure a debt, as in a civil process in any case. It may be replevied by substituting sufficient bonds, which will be discharged as before by returning to the incompetent. This is used in the 14th.

I mean can have no right to improve cattle damage basant, if the basant of his own fence, was the reason of the entrance.

If the cattle are not commonable, they are liable to be improved whether the fence is, over one or not. Horses, asses, &c. are not commonable, sheep, cows are. The rule applies in cases where the cattle enter over a fence which bounds the highway.

With respect to swine, geese, ducks, and the like, the law seems to have made no provision; they have no right however, like the other animals fer nature, cause will, neither, damages rather than, that no recovery could be had for damage done in this kind. Lawyers differ on the subject.!

Torts is the most extensive platform in the case of
 torts. It lies under to recover damages for the conversion
 of personal property. The manner in which the tort is
 by the property is immaterial. Except in the declaration
 it is to be stated to be by hiding.

There are two cases, in which property of a personal nature,
 when wrongfully obtained from the owner, cannot be recovered in
 this action. Grove lies:

1. Where the goods came wrong-
 fully into the hands of the plaintiff as if by theft or fraud. A con-
 version taking is itself a conversion.

2. Where the property came law-
 fully to the possession of the plaintiff by finding; bailment or
 delivery; and was afterwards actually converted to his use.

3. Where the plaintiff came rightfully
 by to the possession, and never has exercised any ownership
 but the plaintiff, however, but refused to redress the article,
 on demand. Demand and refusal furnish prima facie
evidence of a conversion.

1. From the action in which this action is brought, it is necessary
 (to prove an actual conversion) that there has been a demand

and refusal. It is not necessary to prove that the plaintiff has
 demanded the goods and refused to redress them, but it is necessary
 to prove a conversion.

It will then be a breach of contract, and not a conversion, as the
 contract was not a sale; this would be to take the thing
without license or with a license, and without obtaining
the proper license and the benefit of the contract.

When the taking is by the immediate conversion of the book,
 viz. reading it or selling it, then the party is liable
 for the value of the book. Even if the party is liable
 for the value of the book, there must have been an intention of the property.
 Suppose then, a man takes a book, and reads it, and on the
 spot, does not like it; but if he has read him from the ac-
 cuser it and then shot him, it would be otherwise.

The law must state that to have a property in a thing, and a
 possession, means a conversion - that it came into the
 possession of the defendant, and that he converted it.
 It must not in any way, state the amount and return of the
 value of the thing. You must show that
 the property is converted and that the defendant has converted
 some and of conversion.

For the purpose in which the law recovers damages for the prop-
 erty is lost if it has not been sold, or the lost.

If the property has been sold, the plaintiff is liable, have
 more a claim the value, in which, in the manner it is lost by conversion.

Suppose, the owner of the property has returned it to the
 defendant, this action may be maintained for the conversion
 and a conversion, and the recovery will not go in indemnity
 of damages. And, in this case does not cost the property the lost
 If the owner of the property that it does, and give full damages, the owner probably, and
 not a conversion.

Private Wagon

in the north-west corner of the station. The wagon of course
 is the time when the taking of the horse is of course with the
 was the object was the horse of the station.

With the station. The wagon of course is of course for
 horse of the station. The wagon of course is of course for
 horse of the station. The wagon of course is of course for
 horse of the station. The wagon of course is of course for

This branch of the paper has in general been a subject of
in the previous observations. It is in many instances a source
of trouble and has frequently in all cases where the property
is transferred from one person to another without being
the latter case it is the only action.

26/55

It is a subject of great importance and a general prob-
able transfer is sufficient to establish it. The possession is
the case is a case of a case, where the transfer was either
not after the time when the transfer from the first owner to the
second by him on the action.

If the defendant transfers to the possession of the other party
the transfer is afterwards irrevocably converted to the second
owner and the transfer is then the action.

It is the law that a person is a person or a person to be a person
and a person to be a person, he is a person or a person to be a person
8/55

The first principle is that a man is not to enter a public house
but if a person is in a public house after the time, as in a person
is a person or he is a person or a person to be a person
a person to be a person, and a person to be a person
a person to be a person or a person to be a person.

The second principle is that a person is not to enter a public house
for the time when he has entered in a public house, as in a person
a person to be a person or a person to be a person.

The third principle is that a person is not to enter a public house
for the time when he has entered in a public house, as in a person
a person to be a person or a person to be a person.

Malicious prosecution is a wrong to the person, and not to the property.

It is all in order, not to occur, unless with force, as

happens, malicious prosecution.

2. B. 153.

2. For consequential injuries arising from acts so.

2. B. 154.

2. B. 154. Force, as if I have been perjured or persecuted must.

2. For force as occasioned by culpable omission, as if

you were a public officer.

2. B. 155.

2. B. 155. Force under the first head have been already been

2. B. 156.

2. B. 156. Force, as if I have been perjured or persecuted.

The action on the case is more remedial than all the other actions together. This action perpetrator was founded on the equity

2. B. 157.

2. B. 157. Force, as if I have been perjured or persecuted.

2. B. 157. Force, as if I have been perjured or persecuted.

2. B. 157. Force, as if I have been perjured or persecuted.

2. B. 157. Force, as if I have been perjured or persecuted.

2. B. 158.

2. B. 158.

2. B. 158.

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2. B. 158.

There seems to be many cases in which, there is no ground

2. B. 159.

2. B. 159. Force, as if I have been perjured or persecuted.

2. B. 159. Force, as if I have been perjured or persecuted.

2. B. 159. Force, as if I have been perjured or persecuted.

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2. B. 159. Force, as if I have been perjured or persecuted.

2. B. 159. Force, as if I have been perjured or persecuted.

2. B. 159. Force, as if I have been perjured or persecuted.

It is not always necessary that the injured should be an instantanous, to enable the party to sustain trespass or vi et armis. Though where it is immediate that would be the action. Suppose a thing which in itself contains the source of damage is put in motion, if a new direction is given to it by a person acting not as a rational agent, but from the impulse of the moment in self defence, an action of trespass or vi et armis may be maintained by the injured party against the first mover. If it has been voluntarily and intentionally turned out of its original direction by another, Case lies against the person who first threw it would Case lie in claim against the person who changed the direction. 2. L. 559. Ex. 11. 2. L. 559. 2. L. 559.

If a man sets a ditch for the purpose of tripping up the passengers, Case would be the proper action.

Suppose a man turns a mare bull into a cross, trespass or vi et armis will be the proper action. it was a warrant 1. L. 285. 2. L. 72.

But if a man goes into a public place with an unmanageable horse, which runs away with him and injures another the action has been decided to be Case as the man who had the horse in his custody was answerable for it. Case lies if the Grey horse runs away with him, before the man and the horse. If a man orders his servant to carry a trap, and the horse is both are liable in trespass or vi et armis.

But suppose the Lord in the carriage and the master, commit a trespass without blame the master is liable in trespass. Case lies to the Lord in trespass or vi et armis.

action, so that there would be a minimum of trouble. p. 14.
 was taken. It might not be necessary for the Court to be sworn in.

But really, the point is that it is his duty (a duty imposed
 by law) and it is a reasonable one.

This is the ground on which the Court is made liable to an action
 on the case, by the party who is injured, or even to the extent of a false return.
 Officers are not only liable for their own conduct but for that of
 those who are under them.

The law does not intend that a constable who is sworn in
 should be liable to answer civilians for injuries, other than those
 of being detained in custody. But, here it is said that officers
 are liable for injuries to persons who are under their control.

While in carrying out a duty of the clothes from some civil
 who were in bed or prostrate that it was with them.

The law does not intend that a constable who is sworn in
 he is not liable to an action by others who know or
 should know of his duty. But the law does intend that he
 is liable for any misfeasance in such cases. This is regarded by the law
 as being to be expected. The law is more leniently what is the duty of the police.

In the case of the negligence of the police, there is a duty on the
 in carrying out the law. Every negligence is a breach of duty.
 The rule is that of negligence. As far as the law is concerned,
 the rule is that of negligence. The law is more leniently what is the duty of the police.
 The law is more leniently what is the duty of the police. The law is more leniently what is the duty of the police.
 The law is more leniently what is the duty of the police. The law is more leniently what is the duty of the police.

and would be no surprise or trouble to the man rescued
in the ship, when saved, to know that he had been rescued in
which there was still doubt for the whole time if he would
be rescued of the rescue, the others are accounted for the
ship can have but one satisfaction. This will mean a great
injustice, but I am not sure whether the ship could escape
a better one.

If the escape was a voluntary one, the ship would be much better
when the vessel was on maine as a final proof.

It is said that in some cases, the ship can be rescued
where the escape was on maine but it is not so much
doubt the maine of the ship. There is no time that he
cannot recover the same sum as the party.

In the action brought by the party the jury were very much
damaged as they believe if the escape is in the ship, and if
the ship is able to pay the sum as would be smaller than the other
6 Nov. 24. case which have been. I have you can have him, but he
26th. 180 is insolvent. For they are in the same situation as to
10th 311. pay for the ship is not as the ship. But the ship has a
right to the last of his prisoner at the time it was rescued. I think
actioning. It is then a case of practice for the plaintiff to
prove that the man is not able to pay or is insolvent.
If the rescue was a final proof, the ship has his action
against the party who rescued, and also against the rescue
for it is not a final proof, and all over. It is a case
by act of God.

interr.

Uthmaniyah 2000-2001 The 1000th year of the Islamic calendar

more of a secret in the future. *Thomson, right? I'm, y'know, for com.*

an attorney general to, or in case, either of the above

He is a very worthy and intelligent man, but
unlucky, and is a great deal of a poor fellow.

[illegible]

These moneys have been properly obtained from the attorney in law, and
over to the said, Paul, who is now, and again, the same as
the 1st of the month.

He is committed to self-discipline as a condition of his life.

in the case of the bird was apparently good and firm, and in only
he is not liable.

and because of the heavy rain, it was necessary to wait until the
morning when the fog cleared. ~~At 10:00 AM~~ the day
of the trip has been very pleasant and the weather
is very good. We are in the city of St. Louis.
The day has been very pleasant and the weather
is very good.

The substance is in the head & the action in the eye & hand.
It is used and stored in the same manner.

I have supposed that where there is a warranty, ^{to bill} ^{Feb. 9.}
always to bring the action on the contract. - It is cer- Jan. 7
tainly totally immaterial in this case whether there Feb. 20
be an indictment or not to execute. Feby. 41.

If the false affirmation of the wife was the ground of the action, it must be a fact, and not a mere matter of opinion. This is the principle in all the cases. *See* *Leff. 44.*
The wife induced you by false affirmations of fact, to enter in- *5 Bond 148*
to the contract. If the wife had said, that his house was worth *3 B. 148*
5000 an action would not lie. But where she had affirmed *12 J. 166.*
that S. W. was a freeholder 5000 pounds.

If the affirmation related to visible defects such as every body would easily discover it has been holden that no action would lie: As if the seller of a horse should affirm that he was free from defects when he had but three legs, or one eye, &c. if the buyer be blind-tour times the liability of the seller will ever much depend on the manner of making out the affirmation, or on the circumstances, for this induces many cases of fraud, the eye deceives in the looks may be so conducted. If the buyer was partly of a want of care, in the affirmation of the horse or want not subject him to an action.

Dr. R. P. Thom

L. B. 165

Feb.

The consequence of a statement of fact, however, is not much affected
 as telling a falsehood. Yet even if the above reports seem to have
 come in the language that if we be we are told as "habitué"
 records. But now the rule is that any one calling a witness
 ought to be sworn in, is subject to be sworn in.

But in a suit late down in the St. writing that an action is
 the one will not be against the answer who is not allowed
 to be to be his, unless there was evidence. There is evidence
 but that an action on the right was a by and by action.
 turned, but under this action on the case? of the proposition
 means "you cannot bring an action of fraud or in true" action
 can be in fraud where there is no knowledge. Suppose the law an action on
 the case would be, for the act has no more in it, if it had actual knowledge.
 it has been said that a man cannot have an action on
 the case to be made liable in this action. In a later affirmation,
 but it is now settled that a man incurs a moral liability, by a
 fraud committed for the benefit of his wife, as for himself.

This is the action brought against a person cheating with
 false conclusions, as by assuming the name or the credit of
 another, or cheating with false and or

This is the action, whenever a public right is violated to the
 injury of an individual; as if the officers at the hustings
 make a false return or refuse to receive the vote of a free
 man. The action may be brought by the candidate.

Does not follow, of course, that they are liable for the same

copy is made and no more than one will be made. 1822.
 article. There is no action at law for a false relation made at law, by the candidate. Nor is it a violation of private right.

There is no action at law in E.C. seems possible however. This is the action to be brought.

If an action at common law has been brought, the action is not taken to publish the works of another, then this is the action.

The first applications of this sort were made to Pitt to prevent injunctions, since Pitt assumed jurisdiction cases presented to the House of Commons was the first statute which protected the rights of authors, in this respect. The question, whether or there was a common law right attached to some of the law the H.C. where it was carried to the House of Lords. Some of the judges of the time thought that there was a common law right but it is clear that it was in part taken away by the Statute. The question is, whether there is a question, which has never been settled, for and against, which yet may be of some importance, whether an abridgement of a work of which the copy right is secured may be published. The H.C. supposed that it was not. For anything which may prevent the circulation of the original is an infringement of the authors copyright.

With respect to officers' rights of breaking an author's house to make an investigation, it is to be observed that the House of Commons has no right to do so. It must not be used as a pretext for other means. This is an action on the part of the House of Commons.

Action of adultery, or crime, on the action which
is consequently the first cause of the paper used in writing
in particular action on the case. No damage to the
land is consequential.

Pub. V.R.
25.
3d. 1849

It is an action brought by the husband to recover dam-
ages for the degradation of the wife, which she sustained in
her adultery, or in the wife's treating of the husband as her
marriage. The damages for pain are commonly large,
but they are varied by the circumstances of the case: as
in the rank or standing of the wife; the sanctity and relative
situation of the wife; the former character of the wife; and
the conduct of the husband.

A rule now is that if the husband committed at the
crime the action shall not be sustained. Formerly it
was otherwise, and such occurrence was held to be
severance of the marriage.

The fifth cause since the marriage, either as a case of
the wife's desertion or as the husband's desertion who
will recover at its termination. A bill of cohabitation,
or of articles purporting to be entered into between husband
and wife after marriage, for the settlement of the wife's
or of a confession in cohabitation in the wife's handwriting

A Warrantimus is a writ issued from the Court of Common Pleas (or from the High Sheriff) to compel a public officer to perform his duty. It is a writ of course, and is not subject to a writ of error. It is a writ of course, and is not subject to a writ of error. It is a writ of course, and is not subject to a writ of error.

It always relates to some corporation or to some public office. In those cases where a return in damages would not afford an adequate remedy, as if the sheriff refused to record a deed. *3 The. 110-111* In those cases where a return in damages would not afford an adequate remedy, as if the sheriff refused to record a deed. *3 The. 110-111* In those cases where a return in damages would not afford an adequate remedy, as if the sheriff refused to record a deed. *3 The. 110-111*

and even in cases of money, where no suit can be brought, as in the case of a man who is made a slave, or to the treasurer of a county commanding him to pay money. So if a man or a state's officer checks any matter a private right.

A writ of Warrantimus does not issue to a private right, but for the performance of a public duty or for the recovery of a private right, but for the performance of a public duty.

There is no remedy more available of common right as shown in the case of Warrantimus. There is no discretion as to motions for Warrantimus. It is a writ of course, and is not subject to a writ of error. It is a writ of course, and is not subject to a writ of error. It is a writ of course, and is not subject to a writ of error.

166. 94. Where private applications are made for particular purposes.
 Salk 178. 21. Clear & direct evidence as to an act not in conformity with.
 182. 11. writ of mandamus cannot be issued against them for non per.
 120. 178.
 4th. 11. performance of duty.

Don't. 316
 3rd. 666.

The Method of obtaining a writ of mandamus is by an ex parte application by the person who wishes to state the facts as they are and accompanying the statement with an affidavit. A mandamus is then issued, procured as this suggestion, not presumptory, but in the alternative, commanding the person to whom it is directed, either to perform the act required, or give a sufficient reason for his neglect. If he then fails to perform, or make a return of his reasons, a presumptory mandamus is awarded of course.

But if he does make a return, the questions then to be determined are 1. Whether it is sufficient. 2. Whether the facts stated in it are true. The latter an issue traverse by the opposite party, is tried and determined by a jury.

At Com. Law, if a return was made, whether true or false, the process of the Superior was stopped, and the party was left to contest it in an action on the case for a false return, or a recovery of damages in which a person may claim issues of conscience. But the method now in use was given by Stat. 4. Anne.

Private Writings

Private papers

Habeas Corpus

Of the writ of Habeas Corpus, there are in England various kinds, some of which I cannot, from the nature of them, be much here. It is a writ procured by the subject in some particular person's confinement, from who has the privilege in certain cases to bring up his body before the judges or Court to which it is returnable.

1. Habeas corpus ad subjungendum. This is used in England to remove the subject from the custody of the officers of an inferior Court to shew him in a superior Court in a new Prison.

2. Habeas corpus ad satiationem. This writ is used in England to remove the subject from the custody of the inferior Court to shew him with execution of the writ. This has been considered against him in the higher Court. For our Court has nothing to do with the party of the writ.

3. Habeas corpus ad satisfaciendum et recipiendum, which is used in England to remove the subject from the custody of the inferior Court to shew him in the higher Court for a cause which may be tried in that Court to remove the subject into some superior Court.

26.44.

12.13.

2.13.25.

Mon. 14.

Co. 2.14.

Feb. 2.3.

4. Habeas corpus ad testificandum. This issue arises in
 necessary to remove a prisoner in order to bear testimony
 in any Court. In County in such cases a replevin may
 be taken. The bringing up of the prisoner, being a habeas.
 very release. occasional cases difficult in the County habeas.
 for it was claimed by the creditor at whose house the
 prisoner was in custody that this was an escape and he
 would suborn the officer. To preserve satisfaction the re-
 plevin paper on a discrepancy is no escape. This
discrepancy is no escape was only in confirmation of the common
 law. The Sheriff may not have secured release of an escape
 by giving the prisoner an escape order.

2. Habeas corpus in subjunctum. This is the word which is cal-
 led by Englishmen the second escape order. It shows the
 more complete security against the exercise of arbitrary
 authority. However much it may be an illegal exercise
 of liberty whether secured by the chief magistrate of the
 nation, by the officer of the law, or by any private per-
 son may on his own application or on that of his friend
 be brought by this writ before the court and be released
 if his confinement is found to be illegal.

On the contrary.

Case of De Guad.

245

It is a common opinion that this is not
him, when it appears to have been omitted a habeas cor-
pus will issue to bring him before the Court, who if they
find that there was no cause for his commitment, will
order him to be released or, if justly committed on
a charge which is bailable, to be released on his own
bail, but if they are bound to have been bound committed
for an offence not bailable, the judgment is that he be remanded

et.

This writ is not confined in its operation to prisoners
in the custody of gaolers. If a man shuts up his wife
separated or his child without cause this writ is directed
to him to bring out his prisoner for his wife, remand
So if a minor, apprehended, is illegally detained by an
officer, if he can be obtained, he will be discharged by the
court corpus.

It appears on the face of the application that the case
is confined, for ex. on an indictment in the grand jury
for murder, in which case he must of course be remanded.
The application would be denied.

Parliament have a right to confine their members, and
it has been claimed that no one who has been confined
by their vote, can be released by the writ of habeas corpus. 1 Burd. 24.
for that no one can inspect the validity of their proceedings. 2 B. & C. 245.
But this has been strongly denied by the House, and 3 B. & C. 245.
The House insists on his right to determine that question, as
well as any other. Lords Holt and Mansfield seemed

auth.

Private Wrongs

Section 1st Sec.

3 Pl. 136.

afterwards to inquire to the same service.

5 Mr. 27.

1 Mr. 310.

346.

great expense. This question may arise in this country.

1 Talk 350.

2 No. 586.

It was once disputed whether the writ of Habeas Corpus

618.

could issue in vacation. But Courts were afterwards em-

3 750 7.

powered by Statute. Our national Court has decided

10 Mr. 427.

the 142.

982.

that the Statute was in affirmance of the common law.

3 Mr. 526.

2 Jan. 126.

Suppose a man is committed for want of bail, and af-

terwards wishes to procure bail; it has been decided that

Don. 606.

he can be brought up, by Sub. Corp. for that purpose. We

have a Statute authorizing the Court in such cases to

take bail.

If the person to whom a writ of Habeas Corpus is served

Don. 531.

to refuse to deliver his prisoner an attachment for con-

tempt issues against him.

Audita Quercula.

So, where scire facis is obtained against a person who by mistake or otherwise, has not been served with scire facis, execution will be stopped by audita quercula.

The writ of audita quercula does not stay of course, or abate or void the execution, but execution might be lawfully delayed. The party who wishes to obtain it makes a subpoena to the court who returns the indem. in session, indem. to the King, indem. of the Court. (Though as to this, the process is different in different States) and he has an ex parte hearing, at which the witnesses are introduced, or the discharge is liberata. The judge does not decide the question, but if he is satisfied that there is a high probability that justice requires it, he directs a writ to the Sheriff commanding him to cause the hijis execution to know, audita quercula impedimento, that that he proceed no further et with the execution, and to summon him to appear before the Court, and to do and say for what upon a hearing shall be advised as aforesaid. If the facts are found & stated by the complainant, the execution is discharged and he will recover damages if he has suffered any. It is in its nature an action on the case. And as for prosecution to effect right always to be required. It is a complete subpoena of the execution, it makes no difference how far the officer has proceeded, if he has taken property he must give it all up. If no bond is given, the audita quercula is void, and an officer may not to execute is under the hand as large as the execution.

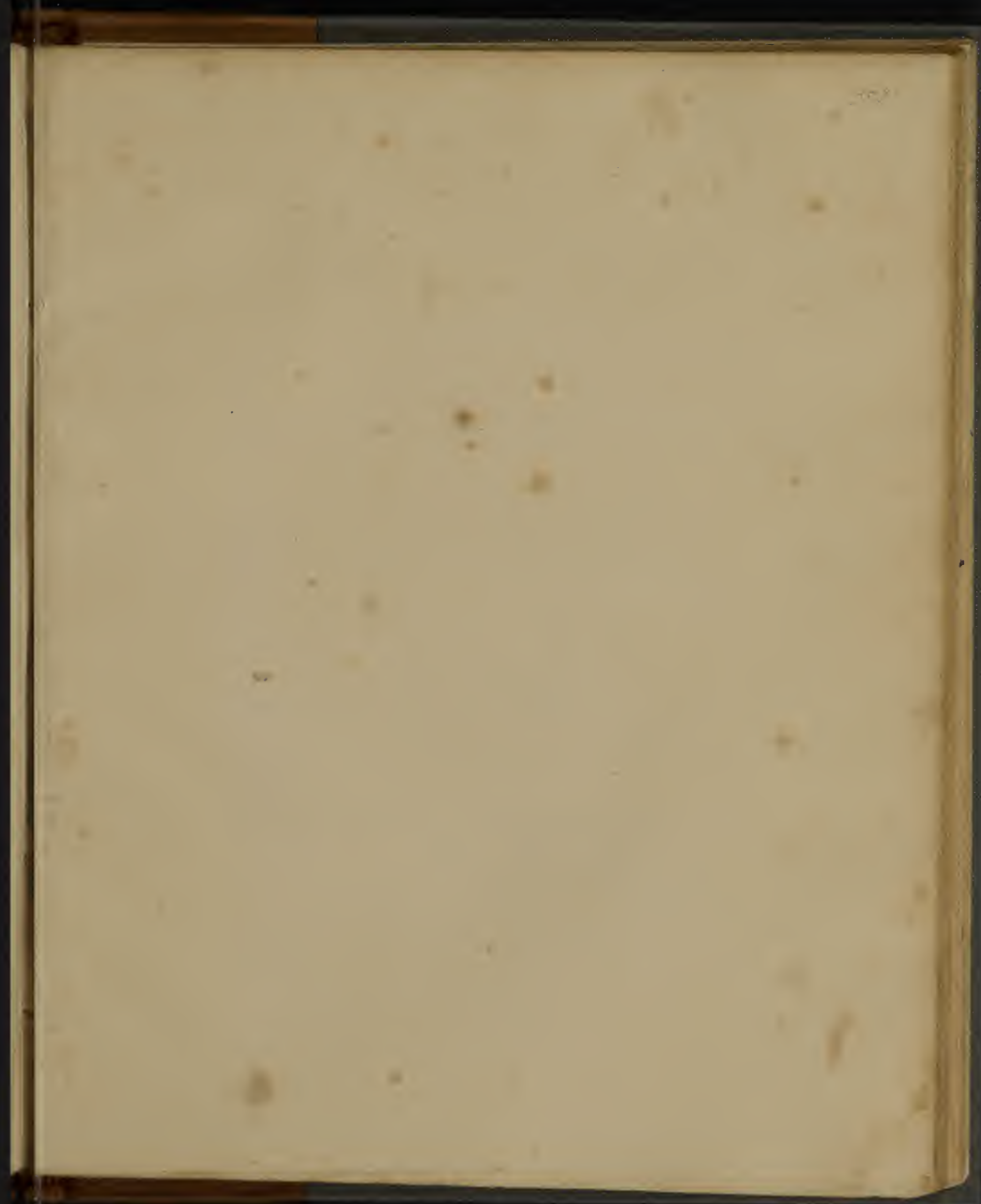
Private wrongs.

Audita Quercia

349.

Of the nature of this writ lawyers are very apt to be swayed. There is so much resemblance between it and a writ of error, that the two are sometimes confounded. Writ of error has not like an audita Quercia a retrospective operation to discharge the execution and avoid all the losses also; it only stops them.

In making of awards, it was mentioned that there had formerly been a very unwarrantable practice in Connecticut, for the parties, at the time of submission, to send ⁱⁿ judgments to each other, to be carried into execution according to the decision of the arbitrator. If the award was corruptly or illegally made the party against whom execution issued could only obtain relief by an audita Quercia. note. 217



Evidence, by Judge Yare

705

With respect to the evidence of facts, it is to be observed, that, though a great variety of questions are immediately arising, which require a hasty decision of the Court, yet there are certain principles which are well ascertained, and which ought to govern. But it is a subject on which more accurate decisions are necessary, on reflection than any other.

It becomes necessary, therefore, to recommend, as a maxim, that these principles should be closely fixed in our minds.

It is very common to confound the terms evidence and testimony - the persons who are introduced into Court to testify are called witnesses - what they say, is testimony - and if it has a tendency to convince the mind, it is evidence.

The different kinds of evidence is as follows - In our books are three 1. Written Evidence, which comprises every thing which is written from the lowest kind of evidence up to records, authenticated. 2. Oral Evidence is derived from the mouth of the witness. It makes no difference whether it is delivered viva voce into Court, or by deposition. 3. Presumptive Evidence, may be derived from either of these, and will not enter

the view, for a defendant charged with a crime, the
evidence is not so strong as it seems to be. It is not necessary, that
positive evidence, to be sufficient should be
such as would not possibly be accounted for in
any other manner than a fact of the sort the
lawyer. Positive evidence is not so much
sufficient evidence with which a reasonable
man might be satisfied. It is not so much
reasonable ground, the fact may be a result of
an accident, or possible, than the truth of the
principal fact to be proved, it amounts only
to that kind of probability, which is not cer-
tain, but not positive either. This is illus-
trated in the books in the case of the man who was
seen to run out of a house, in which a hor-
rour was murdered, with a bloody sword in
his hand. But in such cases the greatest atten-
tion is necessary, for there have been cases, ^{in which} this
kind of evidence has led to the conviction of those who were
not guilty. There are several rules with respect to
evidence which are now submitted. I must now
will be given and I wish to use them.

In all trials the best evidence that the
nature of the case admits of must be intro-
duced. By this it is understood that the best
evidence, which the law allows, must be
used.

to be established. The evidence is not sufficient to establish it. But I cannot see why it must be intrinsically. When the higher testimony is taken, you may introduce lower, but not otherwise.

Else, a supposition is avoided that the evidence was different from what you claim.

There are cases where you cannot prove a contrast of particular kinds. I do not know as much as which must be, then, either, or inhibit.

The sources of evidence are 1. direct, 2. inferential, 3. proposed 4. assumed. There are some generalizations which will be noticed, which are necessary to name of these.

1. Direct. In this case no record is made of character. It is not a personal one. No relation is made, except the isolated case which I should notice here after. Later on we shall see enough for better. But it is true, good to the executibility, but not to the completion. There is no other case may be involved for the same purpose. But however small the general interest is, it will give rise to the subject. But it is not, for the

may be the case in consequence of the
fact that the action is not in the
power of the actor. But the action may be
in the power of the actor. In an instance in the
next case not in the action whereby, either
exclusive or indirect.

There are two kinds of interest in the action:
one direct and another consequential, both
of which will exclude the indirect. If the ex-
clusion in that case will be indirect or remote
perhaps the indirect indirect. If it will
exclude you to one action consequently as to
the action consequently or consequently.
If as this indirect may be indirect or
in exclusion as the provision of another action,
in which the indirect is a fact, it must be
indirect.

The indirect in the action does not exclude.
Thus if the indirect has a same or different action
and indirect, - and exactly like the one
in which he is acted to testify. Then as this
indirect action is one in the action in which he
was not acted it can never be indirect.
either in the other case - and if exactly the
indirect has neither a direct nor a consequential
action. But as he has his action in the action
then indirect with it is indirect suppose indirect

... the confidence of the public, and not to the
... from being ... to help ...
... of moral rectitude. Declaration that confidence
by much ought to be considered, as still in the
breast of the body. I always, resisted the adop-
tion of the rule in this State, while I could, with
propriety. But it is now established, and I
have known a person summoned as a witness
merely because he was supposed to be in the
confidence of him against whom, he was sub-
scribed testily. Had he voluntarily betrayed
the trust to others, then indeed, he ought not
to be exposed. But where this is not the case
I consider the rule as wrong on principle.

The first ones ought never to be ...
... the reason for ...
... for the purpose
of preventing him from being a witness to the
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2d March 1835
3d March 1835

... the other ...
... for ...

as a witness— as, where an action is brought in the name of a non compos mentis person, in such case, whatever of his name, he may be as 'miller is white. (i.e. if not liable for costs.)

2. Infamia which excludes a witness, is not the loss of reputation for vice or crime, it arises from the conviction of a certain class of crimes, under the denomination of the crimen falsi; that is, any offence against the laws of society, which tends to subvert entirely, all character for integrity, such as theft, perjury, perjury. The witness cannot be excluded, until the conviction is proved, or existing in the record.

As to other offences, no enquiry is ever made about them not even to lessen the credibility, except time which directs as to induce the capacity of the person.

There is one case in which a man is excluded from being a witness, for a crime which at first would not seem to come under the denomination of the crimen falsi; and that is Perjury. The crimen falsi is a crimen falsi and not a crimen falsi.

3. Alibi— the principle of Alibi is this case is that nothing is evidence in a court of justice which is not admitted. And a man

... which is not in the same manner as the
... of the ...
... of the ...
... that have any tendency cannot be received as
... general rule in Bond. And if this rule there
is no exception but what results from necessity
as a case of then in certain cases.

In Bond in some cases, which have been
excluded not only for Aethism, but for a decided
infidelity or even for some punishment.

Mathematicians, Papists, Lutherans &c are admitted
in Bond to testify their sworn accordance to their
own religion.

In New England upon the first settlement of the
country, the oath was not administered as it has
usually been in England by the holy sacrament,
but by the evangelical Gospel.

4 Stand of discretion is another ground for exclud-
ing a witness. It is sufficient to lay down any
exact rule, with respect to the age, at which a
person can be examined. After the age of 20
& an exposure is as reliable as to their
competence as that of any other persons. Under
that age, the Court usually inquire before ad-
mitting the witness whether he is of sufficient
capacity to understand the nature of an oath.

Testimony is also objected to, because in itself it is incommunicable and so for some object in the writings.

On this principle it is, that no testimony which is not self-evident that is, does not convince to have the point in issue, can be admitted.

To be because it is not natural, inasmuch as our evidence is restricted - and not because the witness himself may not be competent.

Sometimes stories which witnesses has told to others, when not under oath may be introduced to mislead him, but for no other purpose.

Then a witness is to be imprecise as to the other inquiry is, not what you think or know about him, but what is his general reputation - that depends upon hearsay evidence altogether.

Written Evidence, consists of —

1. Records. 2. Instruments in writing which are proved, and are voluminaries specified in the writings.

By records are meant the acts of the Legislature, the instruments of record, the letters, the messages to Congress, and the acts of the Court of record.

It seems, on second thought of preventing the recurrence the consideration may be engineered into. But in London and indeed almost everywhere else of no use.

No person so numerous as the English
has decided to migrate from Lawrenceville &
may be in his power. But this must be con-
sidered with care & reflection. It is not without
that other motives occur. It is necessary to
be first to consider the wisdom had to this
in that way decided upon. This is the
position the Lord can have in our mind
be mistaken.

I have mentioned that Science is introduced into written and printed sense that from both neither of these is made up, and the basis of human ^{the} evidence that is used science in the making a stage of both are shown to have the principal fact

I have also mentioned the success of the various
a witness, - which were interesting, and to
theism, and sound of discretion. The witnesses
were also useful.

It has been questioned whether the society does
in various cases the method, but the scandal on
that question have long since been removed
thrust the bad always out their proximity

The mode of ascertaining whether a witness is to be
 trusted are two. 1. You may interrogate with
 respect to how he came on 2. You may challenge
 him in his own oath. But it seems to be established
 since that both modes cannot be pursued.

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In the statement made in the evidence, and
another account of the facts, and a third, the
case in the case of Lord's Paper was accepted
and that decision was reversed. The High
court said of this

It seems sufficient to answer I put the entire
trial which was made in England, and any one
interested in the question of evidence in
criminal cases except in private law for
forgery, money, and property, when in all cases
it seems, that a meeting was necessary. The rea-
son for excepting these three cases seems to
me to be this. By an act of Parliament, it
was provided that a person who was convicted
of a felony of forgery was entitled
to a certificate of pardon. That was a privilege
not a duty in the event. And from some
observations which were made by the Chief
Justice in a certain case. I am led to believe
that in the two latter cases of money and for-
gery, the instrument on conviction was
brought into Court and recorded, and at the
same time the prosecutor, or person injured or
interested in the case.

Baron B.
B.N.R.

There is a case in Burrow, in which before the
case of Lord's Paper Lord Mansfield said
the application of the evidence rule. In the
former case of Lord's Paper the question was

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decided, and the case is now before the
 the same in criminal and civil cases.
 To this rule there are important exceptions.
 The first case cases which are excepted from
 the general rule, on the ground of necessity.
 The necessity here need not be such that the law
 on the subject would be wholly inoperative, or
 incapable of being carried into effect, unless the
 general rule that an interested witness should
 be excluded is dispensed with. This necessity
 is well illustrated in the case decided in *the*
State of Winton by which a man who is
 robbed is allowed to recover the sum paid from
 the robber and to testify to it himself. In the
 same principle I think that a crowd who loses money
 in a lottery, should be permitted to testify.

Under this head of necessity a question has
 been raised whether a woman who is allowed to be
 a witness, in an action brought by her father, to
 recover damages for seducing her, and her father
 will have no interest at all and on every
 principle, should be permitted to testify.

Guardians are allowed, it is said on the
 same principle to testify in an action brought
 by them as next kin for an infunditum.
 But this is not an exception on the ground of
 necessity. They have no interest, & present interest

St. 331.
 St. 335.
 2. Mod. 114.
 10. St. 183.

St. 354

St. 356.
 186.

Again it has been said that in common with
in general Statutes, the Judge said in the same
principle to be executed. But it is a statute that
has been said. The law would not be affected. If
the man is the only witness or is made sure
not to have the privilege of perjury let him for
ever be excluded to be to prosecute.

In the State of New York we have a statute for
nothing a man from whom property has been
taken to testify to such circumstances in an ac-
tion to recover the property & accordingly so com-
not be proved by any other - as that he was
the owner of the property, but he cannot be a wit-
ness to the truth even if he saw the property stolen.

Now - since the law is so in the State of
New York, in an action against the Sheriff
for a voluntary escape is admitted as a witness.
But he has a strong interest in the event for if the par-
ty recovers from the Sheriff, the escapee is exempt from
liability. Were the escape a negligent one, it would be
otherwise; for then in consequence of his liability to the
Sheriff, his interest would be usually balanced, which, in
the eye of the law is equivalent to no interest at all.

The question is, whether the same rule should be
applied to the case of a man who has been
taken from the State of New York and taken to the State of
New York.

Feb. 29. The officer himself is a witness, however, not by
 2 Nov. 21. That in the return which he makes on the back
 2 SR. 647. of his report is evidence. If an officer reports
 more or less true, since he is supposed
 the officer is not liable - But the return of an
 officer in his own power is true, and the
 not allow in such case, to come out of him of it, when said.

Unless this leave of absence is an advice
 by the executive - and if the officer is a witness
 to the escape, the escape for himself may be with-
 drawn to prove that the escape was a violence
 then one. But in this case the witness is a
 by interest, in the event of the suit.

Leave 350. The case of a reward given in this case,
 in himself, to give a reward, or in any case in
 due the location. The man who has entitled him-
 self to the reward is a witness to the fact.

Another case arises, and is of a different
 kind of joint testimony, and the several wit-
 nesses are always noticed. If the witness suc-
 ceeds in convincing the jury against whom
 he is called to testify, he himself is exempted
 from any liability. This rule had its origin
 in necessity, but now of course in every
 case where no such reason exists.

A third class of persons excepted from the general rule is that of Agents who may be admitted to testify against their principals. Though conspicuous in the event, the law does not require that a receipt in such cases shall always be taken and it is not the testimony of the agent, is the highest evidence in the nature of the case a summary.

There is one very strong case in Substance from which perhaps a hint might be taken the decision L. 209 on this point, where in Proce, brought by the father to recover of A. B. money which the son had received to the father's use and given away, the son was allowed to be a witness to the recovery.

The case of a factor is another case of this kind. Ag. 2 3. Wils. 48
2. H. 750 If the purchaser, on a contract made with B, his factor, and B is admitted to testify to the price, tho' by raising it he raises his commissions.

The members of a corporation are in some cases admitted to testify in other or several instances in which the corporation is a party. From the above books it would be supposed it to be so in the main part of the case. It now seems to be settled that all corporations are the members Poth. 2. 153 of the corporation, and are not indiscriminably liable to any law that is, in all those cases where the law is in doubt, they may be admitted. This is the case in all instances.

his corporation.

That whenever they will be sincerely & honestly
 Test. 351, able in some cases of the suit, they can not
 22. be permitted to testify. If a legacy is left
 1 Phil 124. to a person & he applies to the upholder of the poor
 2 Phil 22. every member of that corporation is interested
 3 Phil 5. to establish the will, because it will save him
 from the payment of his poor rate, since therefore
 if that is successful, he cannot be a witness.

In such members of corporations are all in-
 terested. so to be witnesses in all cases where other persons
 can be.

There is one, under our Law Statute, which
 Rel. 222. gives a penalty to a person, to be recovered
 1798. either against the person being or the person
 1799. introduced, when through directly or indirectly either person
 4. Can. 80. he is introduced to convince the other.

Persons sometimes become interested after the event
 to which you have wished to their testimony. If this
 is done when such and insurance is by law made
 a witness, to receive testimony. They will still be ex-
 cepted, & not interested.

If the person becomes interested by the consent
 of the party who wants his testimony, (as he becomes
 bound for him) he cannot be a witness.

Suppose a witness should be sworn in for the
 defⁿ when the aff^y wishes him for a witness, in
 his case if the aff^y insists on his testimony the
 defⁿ cannot object.

But if he had become interested by the act of
 God, or in any other way, howe so, and without
 notice, he cannot be a witness.

I suppose it is a rule in the courts that a witness
 is to make his own affidavit in writing, & sign it,
 and is sworn to make it before a Justice of the Peace, &c.
 I suppose it is a rule in the courts that a witness
 who has not sworn it over, whichever way the
 suit, in which he is called to testify, may be determined,
 he is liable to an action.

It is in substance of a county where were admitted to be
 the an^{ts}, & owners as an independent county, the county
 is not a party in the case. The reason given was
 that from the necessity of having a bridge, — and their own
 liability to repay the expense, their interest was balanced.
 There are other cases. In the action of a covenant
 the parties themselves must be witnesses, before
 the court, — This is the law here.

There are other cases where the friends of one
 side have been enforced by statute to be sworn in the
 action of debt, &c. and also in cases of record &c. &c.

But in this case the defendant wanted for a second
 one, for if any person whose name is on the list
 was present, the facts cannot be admitted to
 his credit. It was held that the presence of his person
 besides in contrivance, would prevent the facts from being admitted.

Groups of labor are now applied to the con-
 science of the party claiming, and since he is in the
 measure in dispute of other groups, in an appeal
 to the conscience of the list. The answer of the re-
 spondent in answer is taken on conscience, against
 the other party. I suppose now to stand on the
 principle that he was a witness, and could not
 be impeached. But that was clearly erroneous.
 He is not a witness; and cannot be compelled
 to answer.

There were some cases where the fact was
 a man a witness, and it has been contended that
 he cannot be sworn unless he consents, is ap-
 pealed to by the other party. But the law is other-
 wise. as in the case of a Parol witness, who, if he is
 not called on by the other, may himself demand
 the admission.

In the principles of the common law a man
 who is in the state, cannot be called on, or com-
 pelled to testify except in those cases where he
 is in the state of a witness.

The house is subject to a great many disturbances
in town & which are those of a man & his wife
whose property - including has been stolen, to cast
on a person whom is suspected to, come on as
evidence of himself.

Generally speaking; when property has passed
through many hands he will, no one third whose hands
it has passed can be a witness. But in all cases, where
the interest can be released, the rule is otherwise.
Then the person may be a witness. The
cases in which the interest may be releas-
ed, will be noticed more particularly here-
after.

You may make a man a witness against
his will by releasing, or even obtain on him, since if he
refuse to accept the release, the Court will compel him to testify.

The principle is that when a man is sworn to
testify he is a witness.

Both as to the question of release and the question
of a witness, a person who is sworn to be a witness
in a particular case, where he has no title & fall
at the time of swearing the agreement, the person
the same reason is in relation to a witness who is sworn
in the course of a trial, of a consideration.
The same reason the person who is sworn to be a witness
against the witness. The same principle is that
it is the fact, of the question of release and the

on a bargain of tax and so on the side of a double
just interest, for had it were, the trustee having
assumed the risk, shall not recover of the trustee, or
the failure of his consideration. But in other cases the
rule is otherwise. In the former, the grantor may be
wholly, in the latter he cannot, without a release.

A more trustee who has the power to sell for the bene-
fit of another, when he has no interest therein, is
not responsible. There he is not a party in the reversion.
1802 355 (A, he cannot be liable for costs) there can be
no objection to his assumption, and when he is a party
in reversion, if indemnified for the costs, he will be admitted.

There is one exception to that where a man
believes himself, in point of honor, to be interested.
1802 He cannot be admitted to his oath.

Wherever, you are expected to lose or sustain or
benefit in a pecuniary point of view, you are
a trustee.

It is to be understood, that, unless it be the
reversion. You since I may say, I may have
his estate, but, into a leasehold, and out of it
interest, it is obvious, that that can be of but trifling
value. But his interest is sufficient to exclude
him from being a trustee. On the other hand,
if you are the direct son of a trustee to be a trustee
in it, he, having no present interest, must be so
admitted, though certainly, his time must be more, strong, see the But

Before joining me and the women who were with me
my wife could not be seen. But as it was dark I could
for some time. The women who were with me that
the reason for the accident in the explosion had
an explanation. I must have been standing in the
middle.

There has been a great deal of talk about a man
who married a woman, and it is said that the man
or the wife is dead, and it is said that the man
the woman is dead, and it is said that the woman
an incident of a man. The reason for this is that
he was a man in the man. Since the whole
was a great deal of talk about a man, and it is said
that a man is dead, and it is said that the man
any thing which for some reason is said to be
the reason for the accident. The man was a man
the accident was a great deal of talk about a man
on which it was said that the man was a man. It
a great deal of talk about a man. It is said that
have no interest in the man. It is said that
company of the man. It is said that

There seems to have been a great deal of talk
and it is said that the man was a man. It is said
to be a man. It is said that the man was a man.
No one is said to be a man. It is said that
the man was a man. It is said that the man was a man.
It is said that the man was a man. It is said that
the man was a man. It is said that the man was a man.

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and it is said that the man was a man. It is said
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It is said that the man was a man. It is said that
the man was a man. It is said that the man was a man.

fact alone which he would be willing to testify in
 testimony the relapse to his own long, when he shall and be
 exercise. Thus the mother of a bastard child, is compelled
 when the interest of the husband demands it, to discover the father.

Refuge.

3. The second was some influence. The other idea
 3. Let 26. that it is not the influence of the crime but the
 2. Let 18. influence of the punishment which, or otherwise is
 or pleasure. The rule is simple, as I before stated
 it. But never to leave the rule as two separate
 instances with the rule and some reason that
 the criminal who has been convicted of the crime
 falls. They are a consequence of the process that
 their influence are not entitled them to testify.

He lived some years that of a young man, was
 probable for his own comfort and enjoyment.
 In consequence of which he was induced by
 some barometer will give to enter into of them

for comfort and money. He was in the
 and of himself. — Afterward he lived a very
 sober and correct life, and became respectable
 and useful in society. Thirty years after he was
 found as a witness, and the reward of his ser-
 vices, introduced to my friend him. And he
 lived here that the presence of his merit
 of society, and his own satisfaction of the
 crime, but was recalled by a life of thirty years
 in which the demands of the world were made, of himself

There is a great deal in the Law, in fact, in the
restoration of a man to society, to be done. The
first of the common law, that a man is not to be
restored in all the rights, and sometimes are not
allowed to be to the fullness of his mind and body.

If the law were more ready to restore a man to the
fullness of his mind and body, then the rule would
be a good one. If a man is not, the law would
be to the man, to be put in a position to be
able to do so, and to be able to do so, and to be able to do so.

However, it is not in all cases, that a person
will renounce the character of the convict.

Where incompetency is made to be a part of the
of the punishment for the offence, a person will
not restore his credibility.

The law is in the house where the convict
is, and is not to be a part of the punishment. The
law is in the house where the convict is, and is not to be a part of the punishment. The
law is in the house where the convict is, and is not to be a part of the punishment. The
law is in the house where the convict is, and is not to be a part of the punishment. The

Other crimes are not to be a part of the punishment. The
law is in the house where the convict is, and is not to be a part of the punishment. The
law is in the house where the convict is, and is not to be a part of the punishment. The
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law is in the house where the convict is, and is not to be a part of the punishment. The
law is in the house where the convict is, and is not to be a part of the punishment. The

Feb. 20. been a witness with more liberty in England than in this state. They allow proof of his dis-honesty to be in evidence. And this I think, correct.

Besides impeaching the general character of the witness, his testimony may be impeached by showing that he has told self & others: Feb. 24. Feb. 29. The occasional accusation of a witness, to a "wilt" that it was a forgery, has been allowed in evidence to rebut the presumption arising from his attestation.

Atheists.

2. Tamper are religiously principled when into conversation in admitting nothing according to the able commentators, all who are not of the Christian Religion except those who are excluded. But the law is now entirely changed. Papists & Mahomedans & all now all admitted. And we must be more & more so. This was made. Excommunicated persons in England, cannot be admitted. The Quakers were also excluded then on the ground that they would not take an oath, until a law was made that in civil cases they might be admitted to an affirmation. And in criminal cases, they are still singularly excluded. Neither of these laws ever had any operation in the courts. Thus &c.

professed to be true, are not such in all cases but
 in some I am so in this case, as this follows a ^{fact from}
 no general consequence from the rule that all ^{fact from}
 evidence in a P^o of Justice must be unassailable. ^{fact from}

The rule has been extended beyond the case of ^{fact from}
 more witnesses, and those who seeing a picture ^{fact from}
 since have been excluded.

Whether universalists shall be received has not
 been previously decided.

Want of Discretion.

Want of discretion. It is said in the Books, that
 any person capable of understanding the nature of an oath
 may be a competent witness. Doubtless this is true of some
 men who are so capable, yet it will also exclude them.

It is required to understand, there can be no person
 who is incapable, in whom they shall be received.
 Cases of sufficient discretion without enquiry. After ^{fact from}
 the age of 21 is found to be generally supposed ^{fact from}
 capable of understanding the nature of an oath. ^{fact from}

It has been a prejudice in the English Courts to take
 the narration with an oath of persons as women
 that the Court should not think proper to admit their
 evidence. - But the evidence tells the contrary
 in cases where it has been narrated otherwise
 it is evidence that we have taken the truth.
 The person is the next in those where
 the evidence is not in a P^o of Justice.

15th. 296

There has been a case in which a man has since been exploded. The woman was his. Had no woman who had since succeeded to an instrument by putting in some and shall after as to a committee as a witness to witness it even though he intended to be moved. The principle was decided in the case of Walton & Shelly which has since been decided in accordance. That will however in some of the states adhere to at this stage.

Before it was finally decided in England the rule was restricted to negotiable instruments. As no case has been in evidence since that time, I am satisfied that the principle has been given up.

With respect to the rule that the best evidence that the nature of the case admits of must be produced it must be observed that of the higher evidence this has been an exception to be made to. Thus if a written instrument has been destroyed it is inevitable a case of fact or testimony may be admitted to prove its contents. But the rule then is enounced that the best evidence that from the nature of that particular case can be obtained, must be produced.

Reasonable diligence about the title to land, when the deed must be exhibited

Let a party remain in the presence of the accused
 as an example of justice and the accused.

Hearsey Evidence.

This is not necessarily admissible, but is a
 witness is not regularly sworn. It is to be left
 to what he hears on the way when not under
 oath.

Is this evidence admissible? It is not
 a witness who testified in court and is not
 of this sort of evidence, and can be proved to impeach
 him. Such testimony is not admissible. It is not
 true, and is not to be taken as evidence. It is not
 admissible to corroborate his testimony. It does
 not seem to prove anything. It is not of the same
 kind as the evidence to which he is already sworn.

It seems a kind of case, and a case of confession
 of the facts, and not themselves. It is not a case
 and is not to be taken as evidence. It is not
 to be supposed to be related to the jury.
 It seems to be a case of evidence to make the best
 of his own case. But the whole statement
 is to be taken as a whole, and not as a separate
 statement from the rest. It is not a case of evidence.

Confession obtained from a person is not
 for me a proof of fact as by me a man ³⁴⁵⁵
 cannot be compelled to confess. But yet that ^{Leas. 291}
 they confessed that goods stolen were sepa-
 rated in a particular place where they were
 afterwards found may be given in evidence
 not as a confession but as circumstantial
 evidence of guilt.

3. The declarations of old people with re-
 spect to the homicide of persons by whom death
 is never important exception and possible
 here is this submitted to the rule that hearsay
 evidence is inadmissible. There may be given
 as evidence from a principle of necessity after
 their death.

Hearsay evidence is also admitted from
 necessity to show the probability of a serious
 death. for it is not to be expected that persons
 who run their own course always be preserved.

It is said that the pedigree of a family when
 it becomes important may be proved by hear-
 say that is in reputation through some obli-
 vion has been made to it when a death has
 already occurred. This exception is the result of
 necessity.

In criminal cases the accused may show his good character, in any case. But the pub-
lic cannot show that it was laid on by the ac-
cused just in case then the jury select his
testimony.

Number of Witnesses required.

The general rule is that one credible wit-
ness is sufficient to prove the point in issue.

But to this rule there are exceptions. In civil
cases, which is introduced into all the cases. ^{Costs 40}
local 30 in substance, he requires two witnesses ^{Nov. 188}
in all cases, or that which is equivalent to two. ^{2d. 200}

It is said that the proceedings in the Ct of Sessions
are furnished with an exception to this rule. In a cer-
tain sense they are. Thus where the plaintiff is a
debt in substance, call for the debt's answer on
oath and the plaintiff afterwards introduces one
witness to corroborate the debt's answer, his testi-
mony will not be sufficient for there is only oath against oath.

But if the witness's testimony is corroborated by ^{2d. 584}
strong circumstances (or if there is no opposing oath) it will be ^{2d. 584}
sufficient.

There are likewise a few cases where the testi-
mony of two witnesses are necessary one is a ^{2d. 584}
common law on an indictment for Perjury, for other ^{1. 387}
wise there are cases on oath against oath. ^{2d. 584}

The case of Perjury is made an exception from
a more general rule. But the construction of the
law has been that if there are two words and one witness to call

one witness, & each is sufficient.

The source of the Capital Cases has been, two witnesses, or that which is equivalent to two, are made necessary, to succeed or answer. This of course, leaves it to the Court to see whether the evidence in the case is equivalent to the ordinary evidence with two. But this is not the case, where evidence is not sufficient to meet the standard of the assigned witness.

It is a rule of evidence, that what an agent says for his principal binds it, under the plea in evidence against the principal. If the declaration was made, by him, while acting within the scope of his agency, he was not himself the actor.

I judge ^{presumably} that this principle, since we have been admitted in evidence, against her husband, to no matter what purpose than that of her agency.

What the wife has said, both before and after co-
 ordination, has been allowed to be proved, in an action brought
 by husband and wife, to enforce a right of her, as for
 the collection of a house rent, due her before co-ordination. Here,
 the declarations were not made as agent. The house is
 here, and her husband has no right in it, till collected.
 His promise to guarantee the payment, both in case of co-ordination.

Notwithstanding this principle, that what an agent has said while acting within the agency

o. R. 537
 3 P. 42
 3 P. 594
 3 P. 458
 3 P. 668

o. R. 589
 3 P. 514
 3 P. 668

of his principal, must be taken in consideration,
 There are cases, in which it is not a reasonable
 destiny, and all Rules of our authorities, oppose
 a compromise, and in a case, where a person, then that
 defendant, and the other referee, - This is not a decision
 by evidence in proof of the debt, for a man must be allow-
 ed to say his piece. So, if the offer was by the party himself.

There are certain cases in which a man
 cannot win in evidence the truth. The reason
 of it is always this, he has held him self forth
 to the public for what he is not. For ex: If a
 guest loses property in a house, to which he
 has been introduced to dine, by the sign of an
 inn over the door, the house-keeper cannot
 defend himself on the ground that he had received
 no licence to keep an inn. So if a man allows
 a woman to use his name, and a party for his wife
 he shall be bound to pay for excess, committed to her,
 even by a man who knew that the parties were not married. 2 B. & C. 637.
 2 B. & C. 632.

So, in many cases if one treat with another as, filling
 a particular station, he will no fartherwards be permitted
 to dispute his title. As where I rented the glass house in
 the city, of the case was not allowed in an action for an acceptance
 to have had the presentation of his letter was immaterial.

Presumptive Evidence.

There will be a great deal of presumptions, to rebut
 one of which is, that of an intention to rebut.

The first is a presumption of law as in the
 case which I have been in since, and

now the primary plan must be to establish
proof as in the two last cases.

The second species are presumptions of fact. These may always be rebutted; and would rebuttal, are sound proof. Suppose, for example, a person has stolen a horse from a farmer and his neighbor without attempting to collect it. There is a fair presumption that the horse was found. But this is a mere presumption of fact, and may be rebutted, as my proof that the abductor had often demanded payment in the interim. There here, it is true, there are many such cases, under the head of presumptions.

3731 3732

1. B. R. 532

254 826

Feb. 1876

375/376. live evidence. These should be us - not that it is
175/176. never to be delusive, but that we should be cautious in pi-
275/276. in truth told

Those who are inclined to doubt that I was
informed of the contents of the letter, can
ask their own mother to prove the illegitimacy
of the children. On this subject there has been some con-
fusion, and I will endeavor to give you the true state.

Another question has been raised in this
 point viz. whether the the woman is not ob-
 liged to prove that her husband has had
 no access to her body not entitle to a divorce
 on another ground? I cannot perceive
 that such testimony, if even it could be
 of any avail.

Again, two persons who have lived together
 at once and wife, he allowed, to leave
 that they were not married. This question
 arose under case under the Poor Laws in Eng-
 land, where to ascertain by what laws they
 were to be subject, it became an object ^{Barb. 5th. 25}
 to prove the legitimacy or illegitimacy of the
 children. There are but two cases in the Rep-
 uth Reports on this point, and these are di-
 rectly contradictory to each other. In a case
 which came before Lord Kenyon, he admitted
 the wife to prove that the bonds of marriage
 were never dissolved, and this according ^{to the}
 to the English that makes void the contract.

Until the recent cases in Eng. there never was
 an opinion entertained that was really correct
 namely that the clergy, and after the celebra-
 tion, both parties were bound to be a sacrament. It
 still continued with the clergy.

During the time of Strawn well some large
 parties during the time authority of mar-
 riage to the married. Many people have
 in preference to be married according to
 the ancient custom, by the clergy, the gen-
 tle came out in a number of different
 shapes, whether, though the celebration
 was unlawful, the marriages were not
 valid, and it was in many cases decided
 that they were. until the Stat. of Geo. came
 to the clergy a solemn consent, favor, and
 transacted that marriages unlawful
 celebrated should be considered void

Then, we have no such Statute, and I apprehend that
 a marriage would not be considered void, because it
 was not solemnized according to the uniform Statute, though
 they performed the ceremony would be valid to all
 intents.

Of Witnesses testifying

When witnesses testify they are supposed
 to testify to facts and not to impressions.
 Since when they are called on to testify to
 the words of another, they give them in their
 best, as possible, as they were spoken. Witnesses
 sometimes say, I heard someone make an im-
 pression from facts admitted the record of what
 he heard and from memory then was the matter

But to this rule there are exceptions. In cases where the opinion of the witness is the evidence which is wanted. This is in cases where from the situation, profession, and so forth, the opinion of the witness is admitted in a case where the jury would be incompetent to judge.

Therefore, in cases where the witness's opinion may be wanted. Hence the opinions of men of law, doctors, physicians are of frequent use. So where the sanity of a testator, is required in an attempt to impeach the validity of his will, the real state of his mind can be better ascertained from the opinions of judicious men who were about him, & saner, than by inferences from facts.

Power of Compelling Witnesses to Attend

The power which we have to procure the attendance of a particular person must apply to the proper or compulsory, and obtain a subpoena, that is, ^{12th. 510.} ^{2d. 1151.} a summons, for the witness to come and testify, in such a case &c. This is what the witness is not obliged to obey, unless he feel and express which the law calls the witness, we therefore at the time. Then if the witness does not come, he is in contempt. He has refused a tender of costs. The law has now taken account, but if the trial does not come on the first day I suppose the witness could be detained without tendering him his fees, from day to day, during his attendance.

For he is not to be sworn myself, nor is he able, so as to give evidence to the party who wishes for his testimony.

18th Nov 1835

After this business is over, perhaps it would be the return of the officer, or the attendance of any other person) if the witness does not attend, and no reasonable reason is given, to let well upon a witness, to leave his house taken and brought in to Court and if necessary, committed to prison, until the cause comes on for trial. He is also liable to be amerced.

If the witness does attend in Court, and yet refuses to swear, the Court will commit him to prison, and imprison the witness. I have known a case, where a witness who was brought up from close confinement refused to testify, because his situation put him out of the power of the law to punish him. If the witness refuses to swear, the Court will probably be contented, and the witness would be liable in damages to the party administering his testimony. It would be difficult to ascertain in such cases, a precise rule of damages but I have heard, learned a judge in Chapman v. Chapman, the case to me several times, and not to be argued in. If the witness was sick, this should be returned by the officer.

If the Court of Enquiry before whom a Criminal proceeding is had, think there is reason to believe a witness for bringing a person to trial, the same power to bring the witness over, and compel him to give evidence for appearance or be imprisoned. This is the law, I have heard of the law.

18th Nov 1835
J. H. H. H.
H. H. H.

If, besides the testimony of the witness, the facts are, ^{as stated} manifestly true, is it not a good reason for the possession of the witness, as if he is a ^{single} copy of a company or corporation, he must stand in the number of testes and a subpoena duces tecum. I have known the JP dispense with the production of voluminous books, if the witness brings a copy which he can swear to be true.

The Court will summon the witness for the answer, and then the other party cross-examines him. It appears to have been an ancient practice to examine the witnesses privately, and then introduce them separately into the Court. This was to prevent a conspiracy among the witnesses, or to furnish the means of sedition. The witness was always required to bring with him any paper in his possession, as he took in over a former deposition.

Privilege of witnesses from arrest

An ancient Law is related to prevent an answer to that kind of self-up in his own castle. If therefore his testimony is wished for, the interest of both parties ought to be considered. Hence a witness is privileged from arrest, in civil cases while on his way to Court, when giving evidence, and on his return. The witness must not abuse this right. But the Court will be liberal in regard to the time.

There is also a right of the witness to be heard.

2nd edition

birds, and are avocations of the party on earth as well as in heaven to support some inter-banish motion.

and the force of our English. Admitting
visions are in certain cases admitted in our libraries
in the U. S. as where they are taken in hospitalism
monomania etc to preserve the testimony of witnesses
or, who from age or infirmity are not expected long
to survive. The Eng. Statute law in substance
has generally, excepted in the several States, and
in the U. S. the 2d. But these exceptions are not ex-
tended in all cases; the witnesses are well and the ex-
tension can be preserved they cannot be admitted.

of the same, and important, when while the
 process is going on, in the cases where the work
 is of great value. In the case of the
 to the same, and that other solutions must be given
 and also, there is no objection to the solution
 but the help, which are available, must be
 with the same, when the work is to be done
 the work is to be done, and the work is to be done.

and if they refuse to accept it, shall continue the cause.

Depositions which are taken in England are frequently introduced in one side of cause. For when facts are disputed in England - in England the Chancellor sends it to a JP of law to be tried by a jury. The cause is then returned with the verdict and the Chancellor then decides on the merits.

In Canada and in most of the other States, depositions are used, by force of Statute. Here if the witness resides more than 20 miles from the place of holding the JP, his deposition may be taken, and the opposite party, if he live or have an agent within 20 miles of the place of taking the deposition, must receive reasonable notice.

So, also, in this State, depositions are admitted in all those cases where they are allowed in England.

But the justice of the Peace, who takes the deposition must certify the inability of the witness to attend.

The deposition must be written by the witness or by the Justice or by some independent person and not by the party or his agent.

In Canada depositions and sworn testimony are used in Chancery just as in JP of law.

In criminal cases depositions are never allowed to be introduced. If the witness is unable for the public, the JP will not receive

ordinarily be postponed by the prisoner
if well.

If the prisoner wants witnesses and is unable
to pay their fees, they are generally released
in the prison on the part of the jailer, and
paid in their. The number of witnesses is
unlimited, necessarily depends upon the state-
ments made by his counsel, &c.

In some of the States, Justices of the peace have
no authority to take depositions; and a question
has arisen whether depositions so taken be then
to be introduced in this State, or no trace in evidence.

Over, I have admitted them on the ground of usage.

In some of the States, provision has been made for
allowing parties belonging to other States to take
depositions and authorize or justify to call the per-
sons whose testimony is wanted before them by a
subpoena. In others no provision has yet been
made, so that if the witness will not appear, he
may come before the proper officer and depose there
must be a neglect of Justice, unless the State
out of court to call other proof such laws.

The Justice must seal up the deposition
and direct it to the Court, or deliver it him-
self.

Depositions are still parol evidence, and
are governed in the same rules. They may
be used, in subsequent actions between the same

4. Nod. No.
1. Ball. 270.

after the witness has been sworn and sworn to the truth of his deposition. But a witness can be sworn to the truth of his deposition.

It has been a question whether the copy of a deposition can be read after trial. But the decision is lost. This has never been decided; but I am inclined to think it would not be allowed since the party on motion might object, he permitted to lose his deposition on the files of the Court and then it becomes hard of the record and an exception to the copy is admissible.

14th 445. It has been a question whether if a deposition has been taken, the witness is sworn off and can not be found the deposition even be introduced and it was decided that it may.

So also, it has been a question whether if a deposition has been taken properly, and the witness becomes afterwards interested the deposition can be read. This is still a question. If a witness who has given a deposition becomes infamous, or sells, his testimony may still be used; for an affidavit is required. But in case of a witness interested, the deposition should be admitted. But the record is authoritative otherwise. In Town of a witness lives more than 20 miles from the place of trial he may either be summoned to come in or his deposition may be taken. If the distance he must be summoned. If he is a non-resident he may be summoned. If he is a non-resident he may be summoned. If he is a non-resident he may be summoned.

are required to be certified documents, as
 with reference to the reference in this case, as in
 Vol. 292. The proper office, must examine the copy, if
 it can be obtained. But a copy taken by an
 indifferent person, with an affidavit of its cor-
 rectness, may be used. The whole record in such a
 case is of little use, as it is not a certified copy.
 Specifically, generally a copy of a deposition taken
 in one state, that there be no other copy
 made to be taken are proper copies of that
 state.

I have since decided in favor of the second
 view, and in a case of this nature, between the same
 parties, in the same State or one of our sister States,
 action, while the record remains. The question
 is a bar, whether record was removed on appeal
 verdict or in any other way, in a

There is a distinction to be observed however
 in case of a removal on appeal. If the removal
 is made on the ground that an action
 would lie for the injury, and the removal
 would be a bar to another. In the same
 case, but of the ground of removal, was made
 to that the action would lie, and it would
 be no bar. As for example, to remove to remove
 the bill in a case because malice was committed
 in the declaration would be no bar to a second

subsequent action, in which that object was
sufficient.

Suppose I sue H. in an action to recover
possession of houses, and the jury in a ^{2d} ^{3d} ^{4th} ^{5th} ^{6th} ^{7th} ^{8th} ^{9th} ^{10th} ^{11th} ^{12th} ^{13th} ^{14th} ^{15th} ^{16th} ^{17th} ^{18th} ^{19th} ^{20th} ^{21st} ^{22nd} ^{23rd} ^{24th} ^{25th} ^{26th} ^{27th} ^{28th} ^{29th} ^{30th} ^{31st} ^{32nd} ^{33rd} ^{34th} ^{35th} ^{36th} ^{37th} ^{38th} ^{39th} ^{40th} ^{41st} ^{42nd} ^{43rd} ^{44th} ^{45th} ^{46th} ^{47th} ^{48th} ^{49th} ^{50th} ^{51st} ^{52nd} ^{53rd} ^{54th} ^{55th} ^{56th} ^{57th} ^{58th} ^{59th} ^{60th} ^{61st} ^{62nd} ^{63rd} ^{64th} ^{65th} ^{66th} ^{67th} ^{68th} ^{69th} ^{70th} ^{71st} ^{72nd} ^{73rd} ^{74th} ^{75th} ^{76th} ^{77th} ^{78th} ^{79th} ^{80th} ^{81st} ^{82nd} ^{83rd} ^{84th} ^{85th} ^{86th} ^{87th} ^{88th} ^{89th} ^{90th} ^{91st} ^{92nd} ^{93rd} ^{94th} ^{95th} ^{96th} ^{97th} ^{98th} ^{99th} ^{100th} ^{101st} ^{102nd} ^{103rd} ^{104th} ^{105th} ^{106th} ^{107th} ^{108th} ^{109th} ^{110th} ^{111th} ^{112th} ^{113th} ^{114th} ^{115th} ^{116th} ^{117th} ^{118th} ^{119th} 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^{1207th} ^{1208th} ^{1209th} ^{1210th} ^{1211st} ^{1212nd} ^{1213th} ^{1214th} ^{1215th}

But there is one set of cases, in which the rule, in its conclusive power over judges, is there are where the question was on a public right, as whether a parish were bound to repair a bridge.

Hardy, 311. Suppose I sue them and recover a verdict, and afterwards I bring an action against them, in which the same question arises; the former verdict is evidence in evidence of their liability. But in case of a private right the law is otherwise.

Hardy, 311. A verdict in a criminal case has been admitted to be introduced as persuasive (not conclusive) evidence in a civil case. But it is not admissible. The parties are different. Such a rule would be unreasonable.

27th 977. Where property is concerned, a decision in favor of the public, sets the property in the public. And no question can afterwards be raised by third persons, admitted.

How are the laws of Descriptive State to be proved?
They are to be proved as fact, and hence the printed table book, with proper evidence that it was introduced.

The Common Law must be proved by the opinion of Judges, or of men learned in the law. Suppose a note made in N.Y. is sued in Conn. and the defendant pleads that it is not a note. If the plaintiff pleads that it is a note, the law in N.Y. must be proved.

The judges are supposed to be sworn and of the laws
of their own State. Particular Customs must
be proved.

These persons have been supposed to assail themselves,
of the answer of a party in Chancery. The answer ^{18th 220}
being in due oath, is on the footing of a confession, ^{Pub. 275}
and therefore its being re-inter alios oath is no ob- ^{7th R. 2}
jection. This is true even in S.P. of law, for an affi-
davit, "I am made is evidence against them, in favor of
another person.

The party who would assail himself of the answer
of another in Chancery, must introduce the whole an- ^{5th R. 10}
swer in a not merely an extract from it.

When a man has been a witness in Chancery ^{18th 220}
if he cannot afterwards be found that second time. ^{2th 220}
between the parties is considered in S.P. of law. ^{18th 220}

But if the witness is living, and is seen in Chancery
and his oath is taken, that he dep-
osition cannot be taken, he must be produced.

If he is in such a situation that he cannot be
brought to Chancery, the deposition cannot be introduced
to prove the fact. Though it may be used
to show any mistake or mistake in recollection
in the testimony of the witness, in the
same manner as the parties are allowed to prove
that the witness is incompetent have to be suffered
to be used of the way of impeachment.

In cases where the S. has jurisdiction of the subject matter
and can do whole duty, until it is decided.

June 27.

After all, however, it is not our business to
to do it but from a free. It should be
until the present time it remained and the
moment in which it was admitted in the
evidence in it.

It is an undeniable fact that there has been a steady
course of opinion with respect to the nature of
the Union. It is a fact that the Union of
the people have been divided them as far as
union. It seems that there have been considerable changes
and change in regard to the Union. It seems as if
from the fact that the Union is of the Union. It seems
on the Union. It cannot be said that the Union
that full presence of all the Union. It
different from what it was. It seems as if
and change to create the Union of the Union
between. It seems as if it has been accepted the
one State. It seems as if it has been accepted the
the Union of their own interests, and
between the two parties between them, and
the Union of the Union. The Union
evidence from the Union of the Union, which
evidence of the Union of the Union, which
as foreign judgment.

It seems as if the Union of the Union of the Union
as foreign judgment. It seems as if the Union
on the Union of the Union, which is the Union.

more suitable and is furnished. It is a matter
 of necessity that it should be so. There is a ^{part} of the
 ship is a cargo & cargo, part in a fraction of
 of the cargo. If she was insured with a
 warranty that the property on board of her
 was neutral, the insured of the cargo of the
 vessel would be liable for the loss on the ground
 that she had incurred property on board
 is an insurable interest of that fact, and hence the
 is that must be the condition which the ^{insured}
 insured can proceed to collect the proceeds
 of the cargo, the insurance is not valid. But if the
 cargo is in a cargo ship, her not to be in
 that proceeded on principles which are not
 part of the National law, but municipal ^{part 413}
 regulations of their own, their insurance would
 not be regarded as a valid insurance of
 her want of neutrality. Thus, on this principle
 the decisions of the French Ct of Admiralty
 under the Berlin and London decrees would
 not be regarded in our Courts.

We have here one occasion in Court in
 opposition to this rule but the Ct of Errors
 reversed the judgment.

There are certain things which are required
 to be recorded and others which are not
required to be but which are considered the
 cause they are recorded. In some cases

fn. 93.

75.7.

Pratt v. P.

30.

can be proved by evidence, records, or other

to be kept of births, marriages, and there may be proved by other testimony, not to be denied.

The objection is this. — When there must be a record to create the right, — as a person's degree of education can be obtained, it can be proved by no other testimony than the record. But when you cannot prove the record of a marriage, as the record does not create the marriage, it may be proved by parol.

But there are cases where it is not proved and for the same, where the law will accept a residence in evidence. Then the residence in a family to the time of birth of the children in a family, is allowed to be read in evidence, to prove their age, and used to prove them of a most obvious force committed, to make evidence of that and for a party.

In 1847, however, your committee have been advised as evidence of the state, or person of a deceased person.

To also Almonwood have been allowed to be read for particular purposes, as to show that a particular evening was a married evening. The marriage was in 1847, and was proved in evidence of Almonwood to be struck off to aid in objection in the case.

action in fee. You suppose a fee subsists and there-
fore, in an action to recover the value of the lease, the title
of the elector on whose property the levy was made is
disputed. The exec^{rs} contend, not being in possession the title
deeds may win their contest in absence.

The law does not say, that an affidavit
 filed to the satisfaction of the court, shall be
 deemed to be sufficient, unless the law does not require
them, to give validity to the instrument. If they are
 deemed the execution may be proved by inferior testimony,
 & the disputation of the witness need not be proved.

But a law the law requires the instrument
with witnesses & the law does not say, that it shall
 then be deemed to be sufficient of the execution, for ex-
 ecution is proved by other testimony. Still the
 law does not say, that the affidavit is the
 execution of the subscribing witnesses are
 proved. Suppose this also done. The law requires fur-
 ther that the witnesses should have attested the instrument
 in the presence of the testator. Can you prove this? no, it
 has become impossible. It must be left to the jury to infer
 the proving this much, that the requirements of law were complied with.

Parol testimony cannot be introduced
 to alter the record or explain it, nor can it
 be used. But parol testimony may be used
 to show a fraud. But the elements of a fraud
 are not ascertained. But as a corollary, but as
 concerned with the law, the instrument can
 be used as evidence.

The rule laid down in the books is that it should
 be delivered to the person himself or an attorney.
 But the point I desire is that there is a real and

The rule holds
 even when the
 instrument is not
 made or attested
 by the person
 himself.

2 Sam. 94.

Ork. 25 R. 41.

from the circulation of the same.

It is not necessary that an actual transfer from
 bank to bank should be made. If from the
 various banks, and all other institutions,
 in the country the very same funds are sent
 every day, it is sufficient. The power of that sort of
 very extensive of the resources of banks, from the
 interest of a nation. But this power may be
 so regulated, that it will be of service.

It is not necessary that it should be sent
 as the circulation of the paper is not to be
 sent to bank, but that the bank should
 receive the funds. And, finally, that there
 will be a little delay.

It has a long time been perplexing to many
 persons, when it is necessary to introduce proof
 of the consideration of a paper. Between the
 parties, no paper need be introduced, to
 show that there was no consideration. There is
 itself in fact done. There is a second paper
 with the consideration to show that it was from
 bank, and to show that it was made at the
 time of the second. This may be done, whenever
 there is a statement for the money, for the use of
 which, some other use may be made, in order to give
 the interest and to make the second. But never
 to show that there is to be no recovery.

Where the rainbow is seen, that is, the clouds are
 scattered, the sun is not hidden, and it shines
 as usual, and I call it cloud. But when the sun
 is enshrouded into the situation of the rainbow, it is
 as an hour is.

There is a third power. The sun, or moon
 of a moderate size, always be enshrouded in the
 middle of the rainbow. That there is no connection
 to a close connection, and the properties of them
 will be.

In some of these there is very often a connection
 between the sun and the rainbow. That connection is the rainbow
 that that was the real sun? It is, however, a
 great distance, and no other. It is the sun, and
 it is not, and you know it so.

Simple Contrast

Simple contrast is seen in a rainbow, and it is
 in a rainbow. There are some contrast, when
 the sun is seen to be in the rainbow, and that is
 not a rainbow.

Where the sun is seen, the rainbow is the rainbow
 and the rainbow is seen to be in the rainbow.

There is a rainbow, but the rainbow is not seen
 and it is actually in the rainbow, and it is
 not a rainbow.

There is a rainbow, and the rainbow is seen
 and it is a rainbow, and it is a rainbow.

made of it. But if the instrument is the evidence
of the contract it is not an assent to the provisions
of the contract, as neither of these could be an assent
to the provisions of the contract. The provisions of the contract
are not the same as the provisions of the contract. The provisions
of the contract are not the same as the provisions of the contract.

No party may be admitted to show
any evidence of the contract in the evidence
of a written instrument. No one is allowed to
be admitted to a written contract.

If the instrument is latent it should be explained
as in part testimony.

But if the instrument is latent and does not
appear at all on the face of the instrument as
that there are two persons of the same name
of whom it is doubtful which is meant in the
writing this may be explained by part testimony.
In this case the court does not accept the
evidence until something appears is made known.

But further there may be words used which
are equivocal, as if a man says reports said
in and it is doubtful in what sense
these words were used part testimony of the witness
of certain facts may be necessary to explain them.
Again, if a contract is not written in a cer-
tain notation of a man's name may be that
and in a different notation another. This may be

most of them were within 100 of the ...
land. And in the ... of ...
... from ... In a ... where the
... is ... in a ... of which a ...
of ... is not ... and ... in ...
... by ... to ... In other words
... which is ... in ... of
... taking into ...
... which are not ... of ...
... by ... to the ...

It is a settled rule, that if a residuum
is left, after the payment of all ...
... is ... to the ...
... is the ... of the will, that
the executor is the ... to ... But ...
... is the ... executor. He ... is not
... as the ... is ... when it appears
that ... will ... for ... the ...
... they will direct the residuum to be distributed.

Very ... to ... a ...
... to show that the ...
... to ... but that the ...
... should ... with its full force. Hence
... is ... of ...
... is the intention of the ... that
... the ... should ...
... will ... to ...

the Legislature is a "strong" man" and the
 will proceed the House of Representatives
 will to show the influence that it has a most
 effect.

This affair of Long's was a failure. At the end of
 January since Long's was a failure. This state
 requires that every contract for services under
 should be a contract, and the process would be a
 sufficient even as was received by a construction
 under the same order. It is the fact is that under
 such as the two other, the under contract are a con-
 tract, which the state requires to be in
 written to be made. It is likewise, however, it was
 a fair contract. If Long's was a failure, the process they
 will not be able to do if there were no support ex-
 ception of a part of the contract.

The state to now have a contract for the same
 to be made as an exception. It is not to be the
 state respect to the contract for the same.

Comparison of Kansas

It seems to have been supposed that com-
 parison of Kansas was made evidence in a case, but
 not in a criminal case. But at present with
 respect to both the law is based on the same principle.
 It seems it is reasonable that this should be the
 case. For if it was decided to be a case, the same
 would be the same in a criminal case, and in a
 civil case, and it was a case of evidence.

be seen, & seen to be seen, for the first of any kind.
 It is not to be a subject of study in a school and in a
 classroom case.

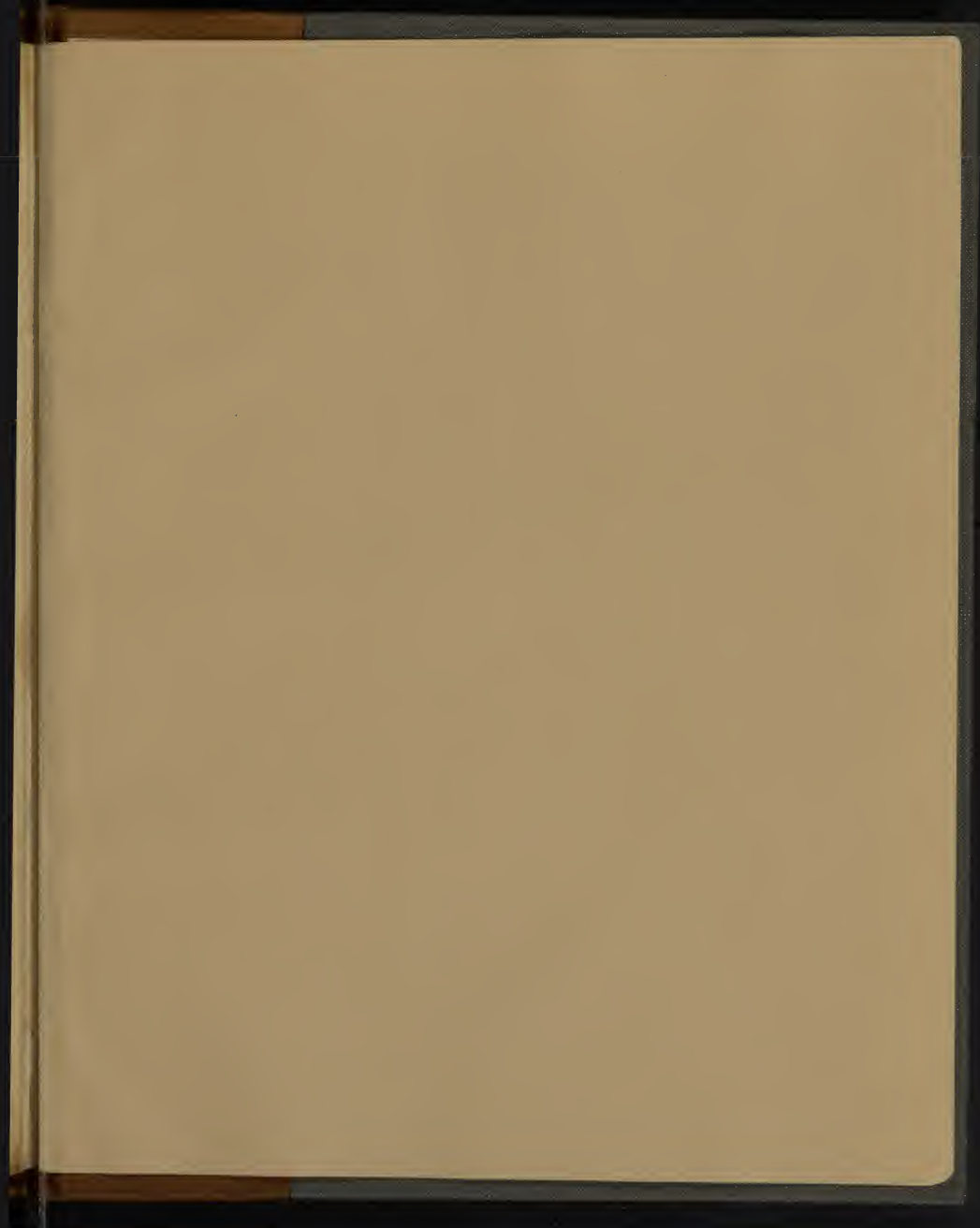
There are two kinds of Comparison of handwriting.
 1. One is where a writer is asked to do this, at the time
 & to the effect of, "Is this the handwriting of such a person?"
 or "Is this the handwriting of a certain person?" The
 first case the question is, "Is your hand the handwriting
 of such a person?" If his answer is, "That he was, the
 next answer is, "Does he now know that the hand-
 writing was once his?" If he answers,
 "I know him well" or "He is a schoolmate to me that
 I know him well" then is satisfied, & the point
 that he was acquainted with his handwriting. The
 question then is not too, "Do you think the handwrit-
 ting was his?" for your schoolmate is not? For which
 one answer will be made in the affirmative or neg-
 ative. This is a case of handwriting, & the
 writer's own hand or the handwriting of the person, & the
 he is asked to be his handwriting, with the handwriting
 known to be his. This comparison may be made
 in the writer's by examining both papers and then
 to form his opinion, as if he has no facts with
 which to compare it he would compare it with the im-
 pression that the writing makes on his mind when
 he first sees it. This opinion of the writer goes to the
 fact and is now compared to a proper evidence,
 & the result will be seen in at once.

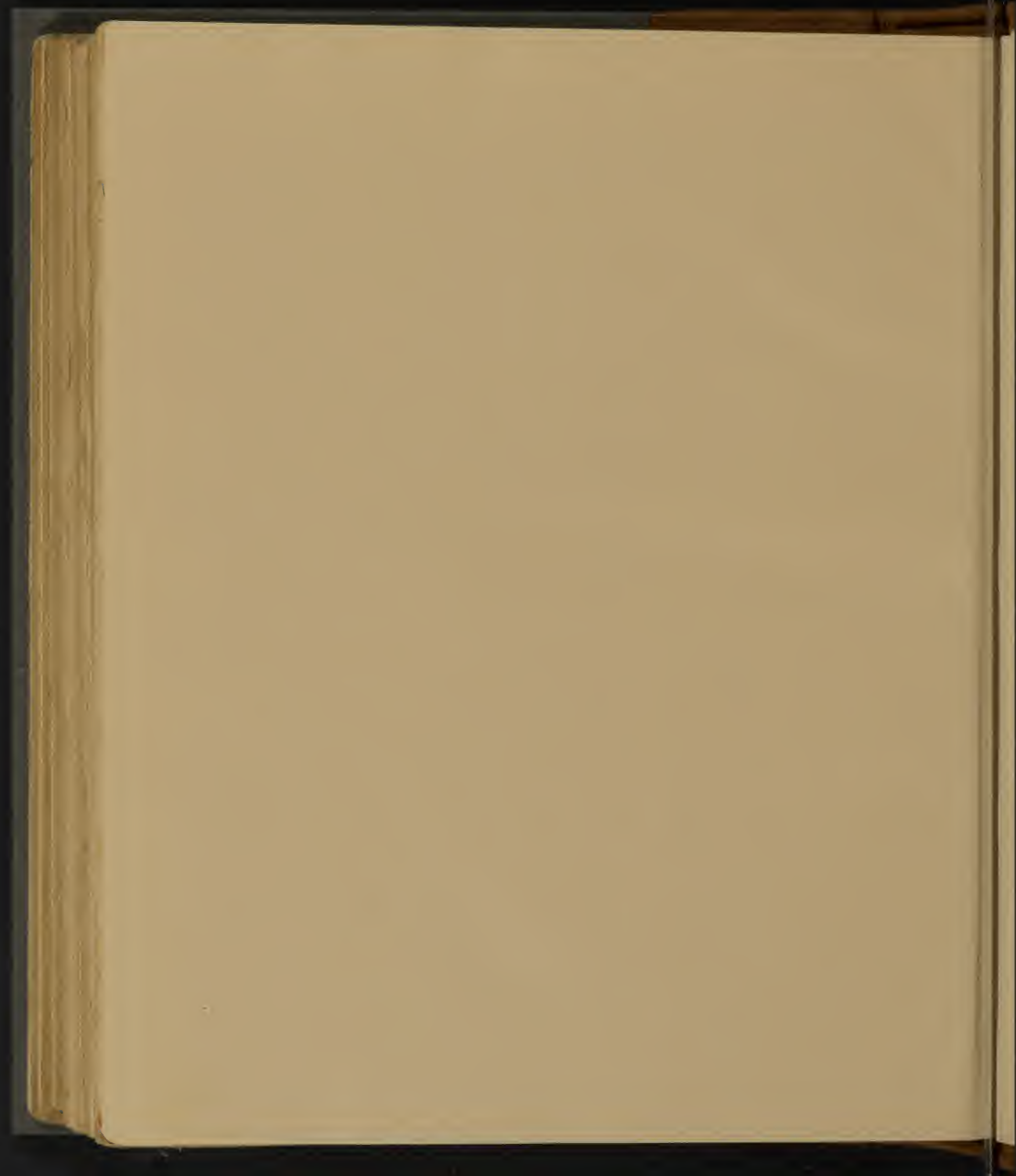
to the other kind of comparison of hands, &c. &c. as soon as established, by the testimony of a witness, that certain papers are in the handwriting of a certain person, to introduce those papers to the jury to compare with the handwriting of the person claimed to be his, from which they are left to infer whether it is the handwriting of that person.

This species of comparison of hands although all the opinions in the books are not perfectly agreed, is apprehended to be considered as improper evidence both in criminal and civil cases. You will find the question agitated in some of the most modern Reports. The course taken for the resolution is that lawyers are in some instances often to make the comparison — that some times they are not to make it at all — and that in all such cases the jurymen who cannot write must depend on the opinion of those of the law who can write and that the jurymen in higher degree, for every jurymen is to be presumed his own jurymen in every point of law & fact.

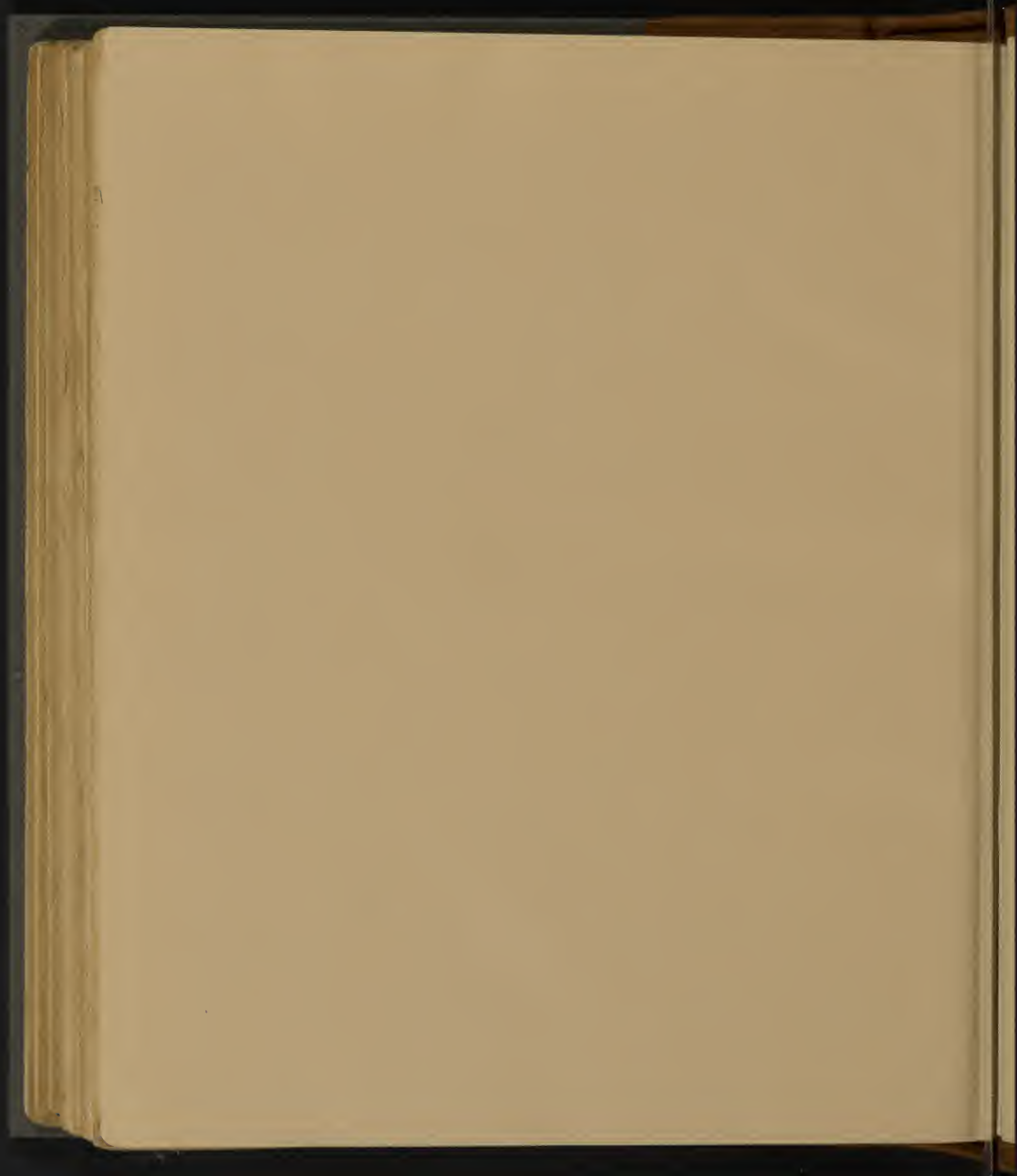
In the state of Mass. I this point has been much agitated. I have seen sometimes & sometimes, that lawyers in proper cases might be to reject such evidence in Court — and other instances where jurymen might be permitted to see and read & write — but this reason does not apply to Conn. where no such instance was ever heard of — that a jurymen could not both read and write.

Voluntary Association. This is a very common objection to the
 Abolition Society, that such evidence is not admissible.
 But it is true, that no individual can
 be found, or a person not deemed able to represent
 well, yet most of them are men not conversant
 with much writing. The same thing is more of a prob-
 ion. That although they could read with propriety
 and write a capital, and in many persons in business
 or some house, yet it would be an error to
 rely on their opinion, as to the sense which it
 is probable that their opinions would often be
 very different from one formed upon a more out-
 ward examination by a person conversant with
 writing.

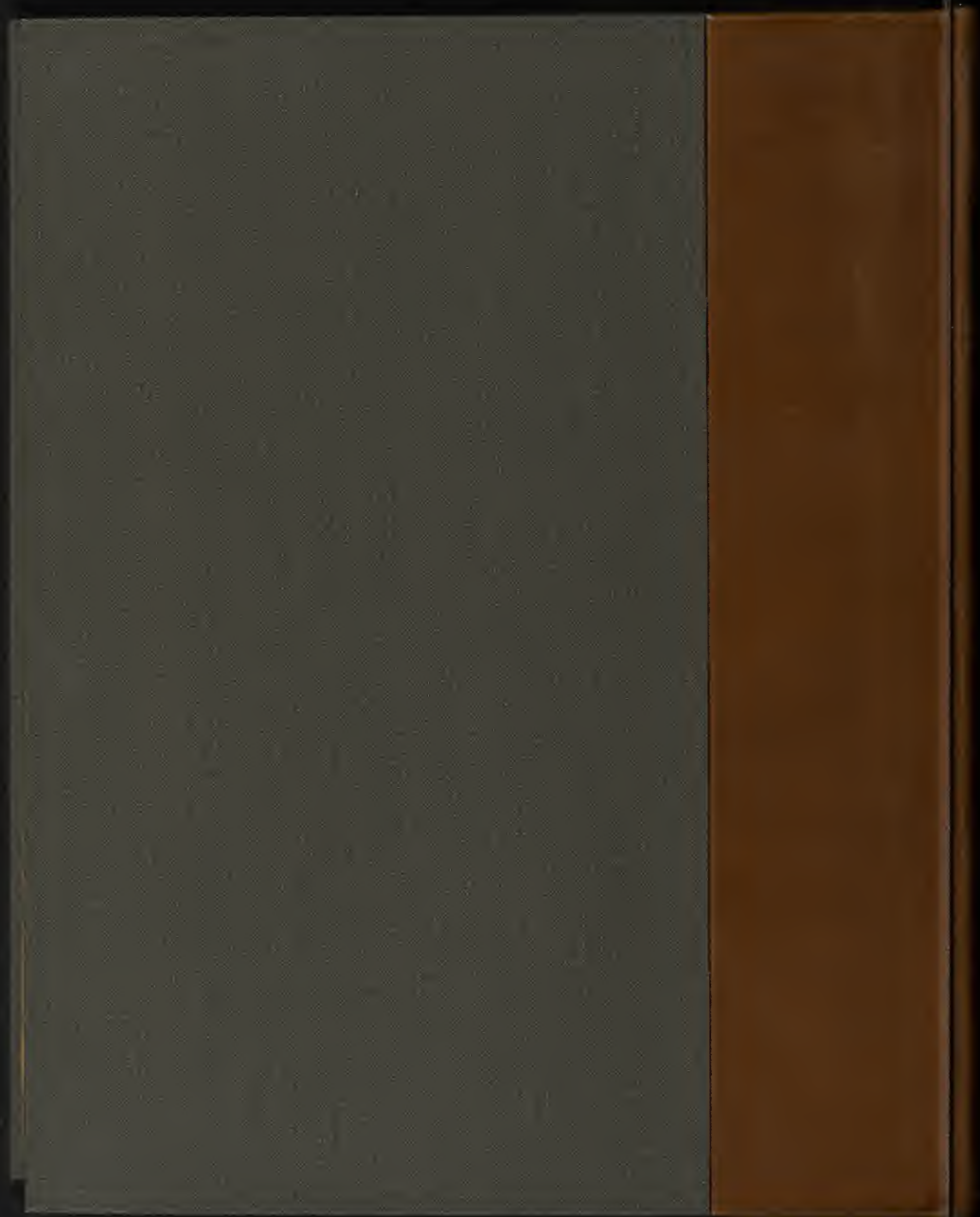












REEVE &
GOULDS
LECTURES

II
